

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.
CIVIL ACTION NO. 83-2864 SA

ANTONIO CIPOLLONE,
individually and as Executor
of the Estate of
ROSE D. CIPOLLONE,

Plaintiff,

: Deposition of:

vs.

: DEXTER NEADLE

LIGGETT GROUP, INC., a
Delaware corporation; PHILIP
MORRIS INCORPORATED, a Virginia
corporation; LOEW'S THEATRES,
INC., a New York corporation,

Defendants.

TRANSCRIPT of testimony as taken by and
before MARGARET J. TEILHABER, a Certified
Shorthand Reporter and Notary Public of the State
of New Jersey, at the offices of WEBSTER &
SHEFFIELD, 237 Park Avenue, New York, New York,
on Monday, October 26, 1987.

A P P E A R A N C E S:

BUDD, LARNER, GROSS, PICILLO, ROSENBAUM,
GREENBERG & SADE
150 John F. Kennedy Parkway
Short Hills, New Jersey 07078
BY: MARC Z. EDELL, ESQ.
For the Plaintiff

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1 A P P E A R A N C E S: (Continued)

2 WEBSTER & SHEFFIELD
3 237 Park Avenue
4 New York, New York 10017
5 BY: JAMES V. KEARNEY, ESQ.
6 JAMES H. GIANNINOTO, ESQ.
7 For Liggett Group, Inc.

8 SHOOK, HARDY & BACON
9 20th Floor
10 Mercantile Bank Tower
11 1101 Walnut
12 Kansas City, Missouri 64106
13 BY: ALLEN R. PURVIS, ESQ.
14 For Philip Morris, Inc. and Lorillard, Inc.

15 BROWN, CONNERY, KULP, WILLE,
16 PURNELL & GREENE
17 Parkade Building
18 518 Market Street
19 P.O. Box 1449
20 Camden, New Jersey 08101
21 BY: DENNIS P. BLAKE, ESQ.
22 For Philip Morris, Inc.

23 ARNOLD & PORTER
24 1200 New Hampshire Avenue, N.W.
25 Washington, D.C. 20036
26 BY: PETER K. BLEAKLEY, ESQ.
27 THOMAS E. SILFEN, ESQ.
28 For Philip Morris, Inc.

29 STRYKER, TAMS & DILL
30 33 Washington Street
31 Newark, New Jersey 07102
32 BY: WILLIAM TUCKER, ESQ.
33 JEANNE SZAFRANOWSKI, ESQ.
34 For Lorillard, Inc.

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I N D E XWITNESSDIRECT

DEXTER NEEDLE

Mr. Edell

6

E X H I B I T SNUMBERDESCRIPTIONIDENTIFICATION

Needle-1	Two-page blank smoking study	43
Needle-2	Two-page document entitled Interviewer Specifications	43
Needle-3	(Exhibit number not used)	
Needle-4	Two-page document entitled All Other Responses	43
Needle-5	Four-page handwritten document number 4906	43
Needle-6	9-page handwritten document starting with word lung	43
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Needle-8	Six pages, top page handwritten, dated 7-25-85	43
Needle-9	18 pages, draft, A Survey About Smoking, September 1985	97
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Needle-12	Four-page smoking study re Mrs. Lee (retained by Mr. Silfen)	108
Needle-13	16-page document entitled Audits & Surveys, #4918, Smoking Study	129
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Needle-17	Two-page document starting with Q.1, When I mention cigarettes, what comes to your mind?	132
Needle-18	One-page document, Revised Results, 8-26-85, Code Revisions, 3508 in handwriting next to number 200	132
Needle-19	One-page document entitled Revised Results, 8-26-85, Code Revisions, 2585 in handwriting next to number 200	132
Needle-20	One-page document entitled Q.3, Among 100 cigarette smokers, how many of them do you think will get lung cancer because they smoke?	132

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1 D E X T E R N E A D L E ,

2

3 [DELETED]

sworn.

4 DIRECT EXAMINATION

5 BY MR. EDELL:

6 Q. Mr. Neadle, my name is Marc Edell. We
7 introduced ourselves before we began this
8 proceeding. I represent the plaintiff. Have you
9 ever been deposed before?

10 A. Yes.

11 Q. How many times?

12 A. Probably five. Four to six times.

13 Q. Ever as an expert witness?

14 A. Yes.

15 Q. How many times as an expert witness?

16 A. All of the times.

17 Q. You don't have any copies of the
18 transcripts of those proceedings?

19 A. No, I do not.

20 Q. Do you know the names of the law firms
21 for whom you testified?

22 A. In depositions?

23 Q. Yes.

24 A. Arnold & Porter was one. I don't remember
25 the names of the firms.

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D. Needles - direct

1 Q. What cases was it that you testified
2 for Arnold & Porter?

3 A. In a recent case that's not settled yet.

4 Q. It's somewhat descriptive but what
5 kind of case? What was the subject matter?

6 A. The subject matter was advertising,
7 misleading advertising, I guess.

8 Q. What kind of advertising?

9 A. I'm not sure I know what you mean by what
10 kind. Do you mean the product, the medium or
11 what?

12 Q. The product.

13 A. Analgesics.

14 Q. Did you perform any type of study for
15 Arnold & Porter with regard to analgesic
16 advertising?

17 A. Yes.

18 Q. What type of study did you perform?

19 A. I don't think I'm allowed to talk about it
20 at this point. The case is not settled. It's an
21 ongoing case.

22 Q. Have you testified in deposition?

23 A. Yes.

24 MR. EDELL: I'm asking that the
25 witness advise me as to the nature of the case,

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D. Neadle - direct

1 sir.

2 MR. SILFEN: The nature of the case
3 that he just testified in?

4 MR. EDELL: Yes. What type of study
5 he did, how he did it. I want to ask him a whole
6 series of questions so I can find out what it was
7 about.

8 MR. SILFEN: Is there any kind of
9 confidentiality order in place?

10 THE WITNESS: I believe there is.

11 MR. SILFEN: Do you know if that
12 covers the deposition?

13 THE WITNESS: I really don't know.

14 MR. SILFEN: But you do think there's
15 a confidentiality order?

16 THE WITNESS: Yes, I believe so.

17 MR. SILFEN: You were told that by the
18 lawyer?

19 THE WITNESS: They had me sign a
20 confidentiality agreement.

21 MR. SILFEN: Obviously I can find out
22 what the confidentiality agreement is from people
23 in my office but until I find out, why don't we
24 skip over it.

25 Q. With whom did you work with Arnold &

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D. Needle - direct

1 Porter on this analgesic advertising matter?

2 A. The attorney's name was Jack Lipson.

3 Q. Was it an administrative proceeding or
4 is it a civil action?

5 A. I'm not sure I know the difference between
6 the two.

7 Q. Can you tell me whether or not it was
8 in conjunction with something that the Federal
9 Trade Commission was doing?

10 A. No, it was not.

11 Q. Is it between private parties?

12 A. Yes.

13 Q. Who are the parties?

14 A. American Home Products and Johnson &
15 Johnson.

16 Q. Who does Arnold & Porter represent in
17 that matter?

18 A. American Home Products.

19 Q. Where is the case pending?

20 A. In New York, federal court.

21 Q. Do you know who represents Johnson &
22 Johnson?

23 A. Patterson, Belknap and something.

24 Q. These other matters that you've
25 testified in as an expert witness, you don't

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D. Neadle - direct

1 remember any of the law firms involved?

2 A. No, I do not.

3 Q. Do you remember what types of matters
4 the cases involved?

5 A. One was trademark secondary meaning case.

6 Two of them were trademark cases. Not one, two.

7 Q. What work did you do with regard to
8 this trademark matter?

9 A. I conducted surveys.

10 Q. What kinds of surveys?

11 A. Surveys of association of particular brand
12 with other products.

13 Q. What brands were involved?

14 A. One was a power tool product. Actually it
15 was something you attach to power tools, an
16 attachment for power drills.

17 Q. You don't know the name of the company
18 that was involved?

19 A. Global Tool Company.

20 Q. Where was that case pending?

21 A. In Florida and in California.

22 Q. What other cases were you involved in?

23 A. One involving the television program, The
24 Greatest American Hero.

25 Q. What was your involvement in that

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D. Meadle - direct

1 case?

2 A. I did a survey.

3 Q. What kind of survey?

4 A. A survey on association of The Greatest
5 American Hero with other movie characters and
6 other entertainment vehicles.

7 Q. For whom were you performing the
8 survey?

9 A. For whoever owns the trademark rights to
10 Superman. I don't remember.

11 Q. Where is that case pending?

12 A. In New York federal court.

13 Q. What are the other matters you
14 testified in as an expert witness?

15 A. I'm sorry. When you say testify, are you
16 referring only to depositions?

17 Q. You've told me you testified four to
18 six times in depositions. Is that right?

19 A. Yes. I don't remember the other cases with
20 depositions.

21 Q. Apparently you've testified in either
22 trials or administrative proceedings?

23 A. Yes.

24 Q. How many times have you done that?

25 A. Probably about five times as well.

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D. Neadle - direct

1 Q. For whom?

2 A. For Virginia National Bank in an antitrust
3 case, for the Coca-Cola Foods Division in a
4 misleading advertising case, for Global Tool in
5 the same case I mentioned before about power
6 tools, for the Pillsbury Company in an antitrust
7 case.

8 Q. Did any of those cases involve Arnold
9 & Porter?

10 A. Yes.

11 Q. Which ones?

12 A. Virginia National Bank and Coca-Cola Foods.

13 Q. You don't have any of the transcripts
14 from those proceedings?

15 A. No, I do not.

16 Q. Who are the lawyers involved in those
17 cases at Arnold & Porter?

18 A. In the Virginia National Bank, it was Harry
19 Katz and I believe Worthheimer. I'm not sure if I
20 have that name right. In Coca-Cola Foods, this is
21 a number of years ago. I don't remember the names
22 of the attorneys. Stuart Land was one but I don't
23 remember the names of the others that I worked
24 with directly.

25 Q. What is Medimetric Institute?

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D. Neadle - direct

1 A. Medimetric Institute was, I don't believe it
2 is any more, it was a marketing research
3 organization which specialized in research in the
4 ethical pharmaceutical market and was a subsidiary
5 of an advertising agency which had the same
6 specialization.

7 Q. When did you work for them?

8 A. 1952 I believe I worked for them part time
9 and starting in 1953 through either the end of
10 1956, around the end of 1956 on a full-time basis.

11 Q. Did any of the work that you did at
12 Medimetric Institute concern the public's attitude
13 with regard to health issues?

14 A. No, it did not.

15 Q. What work did you do?

16 A. I did studies of pharmacists, physicians and
17 other health professionals.

18 Q. What types of studies?

19 A. Studies of pharmacists were basically
20 concerned with prescription volume by brand and
21 type of drug and the studies with physicians
22 concerned a variety of therapies and size and
23 scope of their practices.

24 Q. When did you get your B.B.A.?

25 A. In 1953.

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D. Neadle - direct

1 Q. On the resume that was provided to me,
2 it has receiving an MBA.

3 A. Yes.

4 Q. What is an MBA?

5 A. MBA. M as in Mary.

6 Q. It says N as in Nancy on the resume.

7 A. Sorry. It's a typo. It's an MBA.

8 Q. When did you get that?

9 A. I believe it was 1961.

10 Q. Did you have any full-time employment
11 prior to 1952?

12 A. Yes.

13 Q. What was that?

14 A. I worked on a full-time basis for some Wall
15 Street brokerage houses.

16 Q. When was that?

17 A. From about 1946 to about 1950.

18 Q. What did you do?

19 A. I was head runner and a stock transfer clerk
20 and then I worked in IBM, the IBM department in
21 the precomputer days when there was punch card
22 tabulating equipment.

23 Q. What did you do after you left working
24 for these brokerage firms?

25 A. I basically had been going to college at

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D. Needle - direct

1 night and I switched to going to college during
2 the day to try to finish and worked part time.

3 Q. What did you do in 1956 after you left
4 Medimetric Institute?

5 A. I went to Opinion Research Corporation.

6 Q. In Princeton?

7 A. Yes.

8 Q. Why did you leave Medimetric
9 Institute?

10 A. I felt it was a greater opportunity and a
11 more generalized kind of research operation than
12 one limited to one industry.

13 Q. What did you do for the Opinion
14 Research Corporation?

15 A. I was a survey director and then was
16 promoted to research director.

17 Q. What were your responsibilities as
18 survey director?

19 A. To direct survey projects.

20 Q. Did you plan projects?

21 A. Yes.

22 Q. You would plan the surveys?

23 A. Yes.

24 Q. As well as directed the surveys?

25 A. Yes.

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D. Neadle - direct

1 Q. How long did you work for Opinion
2 Research Corporation?

3 A. Until I joined Audits & Surveys at the end
4 of 1962 so that would be six or seven years.

5 Q. During that period of time did you do
6 any work for any cigarette manufacturer?

7 A. Not that I recall.

8 Q. Did you do any work for any trade
9 association of any cigarette manufacturers?

10 A. Not that I recall.

11 Q. Did you do any work for any
12 advertising companies that represented cigarette
13 manufacturers?

14 A. I assume you mean on their cigarette
15 accounts.

16 Q. Yes.

17 A. No, I did not.

18 Q. Do you know whether Opinion Research
19 Corporation itself during that period of time did
20 work for any cigarette manufacturers?

21 A. It's possible. I'm not specifically aware
22 of any they did but it's possible.

23 Q. Why do you say it's possible?

24 A. They had a lot of clients. I don't recall
25 them all but it's 25 years ago that I left the

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D. Neadle - direct

1 company.

2 Q. Did you specialize in any type of
3 survey?

4 A. No.

5 Q. Did you perform any survey which
6 concerned attitudes of the public concerning any
7 health hazards during that period of time? Again
8 we are talking 1955 to 1962.

9 A. Not that I can recall specifically
10 concerning health hazards, no.

11 Q. Did any of the surveys in any way
12 relate to the public's opinion concerning any
13 health hazards?

14 A. I don't believe so.

15 Q. Why did you leave Opinion Research
16 Corporation?

17 A. For a higher salary and what I thought was a
18 better job.

19 Q. You went to Audits & Surveys, Inc.?

20 A. Yes.

21 Q. What did you do there? Again we are
22 talking about 1962.

23 A. My original job was manager of operations
24 for their national audit division.

25 Q. What were your responsibilities in

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D. Neadle - direct

1 that capacity?

2 A. To be responsible for design, execution and
3 costing of national audit projects.

4 Q. What's an audit?

5 A. An audit in a research sense in a
6 measurement of retail sales.

7 Q. How do you go about performing an
8 audit?

9 A. You measure the retail sales of selected
10 products in a sample of retail stores and combine
11 that data to come up with estimates for some
12 specific population or universe that that sample
13 represents of volume, brand shares, inventory
14 levels, distribution.

15 Q. Were you involved in opinion surveys
16 at that time?

17 A. Only on a part-time basis working with other
18 divisions of the company.

19 Q. How long did you remain in this
20 position? I forgot how you described it, whatever
21 it was.

22 A. Manager of audit operations.

23 Q. How long did you remain as manager of
24 audit operations?

25 A. Until I moved into the survey division in

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D. Neadle - direct

19

1 1969 full time.

2 Q. Did you receive any formal training in
3 the conducting of opinion surveys?

4 A. Yes.

5 Q. Where did you receive that formal
6 training?

7 A. At City College of New York.

8 Q. What were your courses that you took
9 in that regard?

10 A. I'm trying to recall. It's a long time
11 ago. There was over thirty credits in the
12 statistics department, some of which were survey
13 research courses such as marketing research, case
14 studies and marketing research, advertising
15 research. I believe there was one on case studies
16 and questionnaire design. A course in probability
17 sampling. There were basic courses in statistics
18 as applied to surveys, analysis of variance. I
19 don't recall the others.

20 Q. Did you recall any other formal
21 training?

22 A. Not in an educational institution, no.

23 Q. Do you recall any other formal
24 training?

25 A. I've attended many research conferences

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D. Needle - direct

1 which I've listened to speeches and seminars by
2 people, talks and seminars by people on various
3 aspects of survey research.

4 Q. Prior to 1969, were you aware as to
5 whether or not Audite & Surveys, Inc. had ever
6 done any work for any cigarette manufacturer?

7 A. Yes, it had.

8 Q. What type of work had it done?

9 A. It had done distribution studies for tobacco
10 companies.

11 Q. What do you mean by distribution
12 studies?

13 A. These are measurements of the availability
14 of specific brands, the degree of availability of
15 specific brands in various retail channels.

16 Q. What was the purpose of those studies?

17 A. To inform the manufacturers as to how good
18 or bad their distribution was in total and by
19 various subclasses of the distribution system.

20 Q. When were those studies being carried
21 on?

22 A. During the 1960s.

23 Q. Is that the only work that you can
24 recall prior to 1969 that Audite & Surveys, Inc.
25 did for any cigarette manufacturer?

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D. Neadle - direct

1 A. That's the only ones I'm aware of.

2 Q. Are you aware as to whether or not
3 Audite & Surveys, Inc. did any work for any of the
4 cigarette manufacturers' trade associations?

5 A. To the best of my knowledge, they did not.

6 Q. Did Audite & Surveys do any work for
7 any advertising companies?

8 A. Yes.

9 Q. Do you know whether it did any work
10 for any advertising companies which represented
11 cigarette manufacturers? Again it would be
12 cigarette-related research.

13 A. Only to the extent I've testified about the
14 tobacco companies before. I don't know of any
15 other research that was done on cigarettes.

16 Q. When was it that the state of the art
17 of opinion research surveys was such that a
18 cigarette manufacturer could have conducted a
19 study to ascertain the level of awareness that its
20 consumers had concerning cigarette smoking and
21 health?

22 MR. SILFEN: Objection to the form of
23 the question. Would you read it back.

24 (Question read.)

25 A. I believe I believe they could have

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D. Neadle - direct

1 conducted surveys like that 60, 70 years ago.

2 Q. 1920s?

3 A. Yes.

4 Q. 1930s?

5 A. Yes.

6 Q. 1910s?

7 A. I don't know. I would have to read up on
8 some of the history as to when opinion surveys
9 started in the more formal sense. Opinion surveys
10 go back to before the United States was formed.

11 Q. Did Audite & Surveys, Inc. ever do any
12 work for cigarette manufacturers concerning the
13 public's awareness concerning the health hazards
14 of cigarette smoking other than the work you
15 performed here in this case?

16 A. Not that I'm aware of.

17 Q. Do you know whether or not Audite &
18 Surveys, Inc. ever did any opinion surveys with
19 regard to any health issue and the public's
20 awareness of that issue?

21 A. Does that question refer to prior to this
22 survey?

23 Q. Excluding this survey, yes. Prior or
24 subsequent to the survey but excluding the survey.

25 A. Yes, we have.

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2017010868

D. Needie - direct

1 Q. Can you tell us what the subjects of
2 those studies were?

3 A. We've done a survey about mine safety, coal
4 mines. We have done a survey about natural
5 hazards.

6 Q. What do you mean by natural hazards?

7 A. Fire, flood, windstorm, hurricanes. We have
8 done a survey about packaging safety with regard
9 to pharmaceutical products.

10 Q. Is that it?

11 A. Those are the only ones I can think of.

12 Q. When was the survey with regard to
13 coal mine safety conducted?

14 A. Approximately three years ago.

15 Q. By whom?

16 A. By Audits & Surveys.

17 Q. Were you the person who designed and
18 supervised the survey?

19 A. No. It was done by someone who works with
20 me.

21 Q. Did you have any participation in that
22 survey?

23 A. Not in any substantive way.

24 Q. For whom did you perform that survey?

25 When I say you, I mean Audits & Surveys, Inc.

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D. Needle - direct

1 A I don't recall who the client was.

2 Q Do you recall for what purpose it was
3 performed?

4 A It was performed to determine whether there
5 were preconceived notions among the majority of
6 the public in some communities about mine safety
7 and whose responsibility it was and that was the
8 general topic area.

9 Q Do you recall whether or not you were
10 doing it for the mining industry or the government
11 or the people in the localities?

12 A I believe the study was done for a law firm.

13 Q What law firm was that?

14 A I'm afraid I don't know.

15 Q How many of Audits & Surveys, Inc.'s
16 work is done for law firms?

17 A Relatively small amount. Less than two or
18 three percent.

19 Q The study on natural hazards, who was
20 that performed for, sir?

21 A University of Massachusetts and they may
22 have had a second university connected with it.

23 Q Did you have anything to do with that
24 survey?

25 A Yes.

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D. Neadle - direct

1 Q. What was your role in that survey?

2 A. The execution of the survey was under my
3 responsibility..

4 Q. You didn't design the survey?

5 A. No, I did not.

6 Q. What types of surveys were you doing
7 back in 1969?

8 A. Mostly marketing surveys.

9 Q. What was the purpose of the marketing
10 surveys?

11 A. To provide various kinds of marketing
12 information to our clients, advertising awareness,
13 share, consumer attitudes, consumer behavior
14 measurements.

15 Q. How do you determine advertising
16 awareness?

17 A. By asking the consumers what they are aware
18 of within a specific framework.

19 Q. What do you mean by within a specific
20 framework?

21 A. Usually a framework of a product category or
22 a product class.

23 Q. All you do is ask them a question
24 about that particular product's advertising?
25 That's a survey?

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D. Needle - direct

1 A. That could be a survey. Usually we did it
2 in connection with many other measurements about a
3 particular product category from the same
4 consumers.

5 Q. Why is that?

6 A. For analytic purposes.

7 Q. Before you got your MBA, did you have
8 any formal training in opinion surveys?

9 A. Yes.

10 Q. What courses did you take and what
11 training did you receive?

12 A. Similar courses I mentioned earlier were
13 taken as part of my MBA. I don't really recall
14 which ones were part of my MBA and which ones were
15 part of my bachelor's degree.

16 Q. What criteria are there for survey
17 research companies to join the Council of American
18 Research Organization?

19 A. They have to have been in business a minimum
20 of one year. They have to be a for-profit
21 commercial organization. If they are owned by any
22 other company or business, they have to operate as
23 an independent subsidiary then as in the survey
24 research business. They have to be what we would
25 refer to as a full line research company, not just

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2617010872

D. Neadle - direct

1 a field agency, not just a data processing agency,
2 not just a consulting agency.

3 Q. Are you a member of any professional
4 organizations?

5 A. Yes, I am.

6 Q. What are those?

7 A. American Marketing Association and the
8 American Association for Public Opinion Research.

9 Q. There was one paper listed in the
10 resume that I was provided. Did you publish any
11 other papers other than that one?

12 A. I believe there were two listed in the
13 resume.

14 Q. I'll check and see if I was wrong. I
15 see, The Relationship Between Attitude and Product
16 Behavior and Drug Salesmen Like Their Jobs.
17 Right?

18 A. That's correct.

19 Q. Any other publications?

20 A. No.

21 Q. What qualifies an individual to
22 perform survey research? Obviously you don't have
23 to have a Ph.D. You are doing it. What qualifies
24 somebody to perform such research?

25 A. Some combination of education and experience

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2017010873

D. Needle - direct

1 and training.

2 Q. What type of education?

3 A. Since opinion research draws on many fields,
4 the people who perform opinion research or survey
5 research come from a variety of educational
6 backgrounds and the social sciences and the
7 mathematical sciences and some from other fields
8 such as liberal arts.

9 Q. Are there degrees that one can obtain
10 in marketing that specialize in survey research?

11 A. Not survey research per se but in marketing
12 research.

13 Q. What schools offer such courses?

14 A. City College. It's Baruch College now. It
15 was City College when I went to it. University of
16 Georgia. There are a number of others that have
17 specific programs in marketing research. Hofstra
18 has an applied psychology Ph.D. program in which
19 one of the areas you can specialize in is
20 marketing research and survey research.

21 Q. Are there any recognized giants in the
22 field of survey research?

23 A. I'm not sure I know what you mean by that.

24 Q. Are there people who are considered to
25 be the best in the field?

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2017020874

D. Meadle - direct

1 A. There are people who are better known than
2 others but usually it's in some aspect of survey
3 research as opposed to the total area of survey
4 research.

5 Q. What about opinion research?

6 A. I classify that as a part of survey
7 research.

8 Q. Are there any experts that you
9 recognize in opinion research?

10 A. As I said, usually they are experts in a
11 particular aspect. They might be sampling experts
12 or statistical experts. They might be
13 questionnaire design experts. They might be data
14 processing experts. I don't think somebody is
15 known as an expert in, that they are acknowledged
16 leaders in survey research as a total field.

17 Q. Is the design of a survey research a
18 specialty in survey research, designing the
19 studies?

20 A. Again, designing a study usually includes a
21 lot of different facets. It includes the sample
22 design, it includes the projected analysis, it
23 includes the questionnaire design.

24 Q. Which aspect are you an expert in?

25 A. I'm a generalist in designing and conducting

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2017010875

D. Neadle - direct

1 surveys.

2 Q. There are no experts who are
3 generalists in conducting opinion research
4 surveys?

5 A. I believe there are people who are experts
6 in the field but there are no what I would call
7 acknowledged experts in the total general area.

8 Q. There are no acknowledged generalists
9 as you described it as experts in the field. Is
10 that what you are saying?

11 A. That's correct.

12 Q. How do you get paid for your work?

13 A. I get a salary from Audits & Surveys.

14 Q. Straight salary?

15 A. Plus I'm a stockholder in the company.

16 Q. The work that you are performing in
17 this case for Arnold & Porter, that's in the
18 context of your work with Audits & Surveys. Is
19 that correct?

20 A. That's correct.

21 Q. You are not receiving any additional
22 remuneration for that. Is that right? Other than
23 your normal salary.

24 A. That's correct.

25 Q. You don't get any bonuses or anything

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D. Needle - direct

1 like that?

2 A. That's correct.

3 Q. How much has your company received
4 from Arnold & Porter for conducting your work in
5 this matter?

6 A. I don't recall the amount.

7 Q. Did you give them a projected budget
8 when you sat down to work out this survey for
9 them?

10 A. At the time of the survey, yes, I believe I
11 gave them an estimated cost for the survey.

12 Q. What was the estimated cost of the
13 survey at the time?

14 A. I don't recall the amount. It was -- I just
15 don't recall the exact amount. I would have to
16 look it up.

17 Q. Do you remember whether it was \$1,000
18 or \$10,000 or \$100,000?

19 A. It was less than 100,000, between 50 and
20 \$100,000, but I don't recall the exact amount.

21 Q. Do you remember whether you went over
22 budget?

23 A. No, I don't recall.

24 Q. What was the purpose of the study that
25 you performed for Arnold & Porter in this case?

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2017010877

D. Needle - direct

1 A. To determine the degree of awareness among
2 the general public of the dangers that have been
3 related to smoking.

4 Q. What are those dangers?

5 A. Various kinds of illnesses.

6 Q. I want to know what the dangers are.

7 You said that the purpose was to ascertain the
8 level of awareness of the public regarding certain
9 dangers and I want to find out what those dangers
10 are.

11 A. Dangers of contracting certain illnesses
12 among smokers.

13 Q. Contracting what illnesses?

14 A. Specifically lung cancer but getting ill or
15 sick in general.

16 Q. Ill or sick in the form of what
17 disease?

18 A. I believe lung cancer was the only one we
19 specified in the study.

20 Q. Why was that?

21 A. That was the only one I was asked to find
22 out about specifically.

23 Q. Asked to find out by Arnold & Porter?

24 A. Yes.

25 Q. Is there a specific question that you

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2017010878

D. Needle - direct

1 had that they posed to you that had to be answered
2 by this survey? I've had a couple of other
3 depositions and all these experts tell me it's
4 very important to understand the precise question
5 that you are looking into when you begin one of
6 these surveys.

7 MR. SILFEN: Object to the form of the
8 question.

9 MR. EDELL: Let me finish.

10 MR. SILFEN: It's already
11 objectionable.

12 MR. EDELL: Let me finish.

13 MR. SILFEN: It's already
14 objectionable.

15 MR. EDELL: Are you going to let me
16 finish my question, Mr. Silfen?

17 MR. SILFEN: Absolutely.

18 MR. EDELL: Before you object?

19 Q. Getting back to the question before I
20 was interrupted by Mr. Silfen, a number of the
21 defendants' experts have identified for us the
22 importance of the question that one is looking
23 into when you are performing one of these opinion
24 surveys and I want to know the specific question
25 that was posed to you by Arnold & Porter to look

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D. Needle - direct

1 into, sir.

2 MR. SILFEN: Objection to the form of
3 the question. You can answer.

4 THE WITNESS: That's what I'm trying
5 to find out.

6 A. We didn't discuss a specific question. We
7 discussed issues. I formed the questions.

8 Q. The issues were again?

9 A. The degree of awareness of the public of
10 communication about the dangers of smoking and
11 association of smoking with lung cancer and I
12 believe those were the major issues we talked
13 about.

14 Q. Did you attempt to ascertain the
15 degree of awareness by the public regarding
16 communications from the tobacco industry on the
17 issue of cigarette smoking and health?

18 A. We did not try to get the degree of
19 awareness from any specific source or any single
20 source but just as a general thing, what was the
21 awareness.

22 Q. Awareness with regard to any specific
23 statements?

24 A. Awareness of the association of smoking with
25 illness, as I said.

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D. Needle - direct

1 Q. Did you have an understanding as to
2 the purpose that Arnold & Porter was asking that
3 the study be performed?

4 A. That it was to be used in litigation.

5 Q. In what way?

6 A. I'm afraid you'd have to ask the attorneys
7 how they intended to use it.

8 Q. There were no discussions between you
9 and the attorneys concerning why they wanted you
10 to do this study in terms of this litigation and
11 what they intended to use the study for? No such
12 conversations?

13 MR. TUCKER: Object to the form of the
14 question.

15 MR. SILFEN: You can answer.

16 THE WITNESS: Could you repeat the
17 question.

18 Q. Were there any conversations between
19 you and any of the lawyers, Arnold & Porter or any
20 other law firms that are listed on the report that
21 you prepared concerning why they were asking you
22 to perform this study?

23 A. I don't recall anything other than it was to
24 be used in litigation.

25 Q. What kind of litigation?

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D. Neadle - direct

1 A. In cases where cigarette companies were
2 being sued by either the people who got sick or
3 their estates.

4 Q. Did you review any research similar to
5 that performed by you in this case performed by
6 anybody else?

7 A. No, I did not.

8 Q. You didn't review any of the Gallup
9 surveys or the Roper studies or the studies
10 performed for the Department of Health, Education
11 & Welfare. Is that correct?

12 MR. TUCKER: Object to the form of the
13 question.

14 A. No, I didn't review any other research on
15 this.

16 Q. Is there a reason why you didn't do
17 that, sir?

18 A. I was never asked to.

19 Q. You don't think it would have been
20 helpful to you in formulating your questions in
21 this case to have reviewed any of these other
22 surveys? Is that correct?

23 MR. BLEAKLEY: Object to the form of
24 the question.

25 A. No, I don't believe it would have been

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D. Neadle - direct

1 helpful for this particular survey.

2 Q. Why do you say it wouldn't have been
3 helpful for this particular survey?

4 A. There were no objectives of comparing with
5 the results with other surveys, at least not my
6 understanding of the objectives.

7 Q. Who told you that that was not one of
8 the objectives?

9 A. No one told me that it was not one of the
10 objectives.

11 Q. It was never stated as one of the
12 objectives.

13 Q. How did you formulate that
14 understanding?

15 A. Because it wasn't one of the objectives that
16 was raised.

17 Q. Is it your testimony that you cannot
18 validly relate the results of this study to prior
19 studies?

20 MR. SILFEN: Wait a minute. Objection
21 to the form of the question. It's just --

22 Q. Sir?

23 MR. SILFEN: You can answer.

24 THE WITNESS: Could you repeat the
25 question.

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D. Neadle - direct

1 (Question read.)

2 A. I didn't testify to that. I haven't looked
3 at any other studies. I don't know if this study
4 is comparable to them or not.

5 Q. How would you know? What would you
6 look for in these other studies to ascertain
7 whether it would be comparable or not?

8 A. I would have to look at the questions in the
9 other studies, the design, who was surveyed, how
10 they were sampled, a whole host of things about
11 other studies before I would know whether they are
12 comparable or not and in what context the
13 questions were asked.

14 Q. What do you mean by in what context
15 the questions were asked?

16 A. Whether they were preceded by other
17 questions on other issues or even other questions
18 on related issues.

19 Q. How does that affect the studies?

20 A. It can affect the results of the questions,
21 what's preceding a question.

22 Q. How does that happen?

23 A. It happens because people's answers are
24 different, depending on in what framework a
25 question is presented.

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D. Needle - direct

1 Q. Why are they different depending upon
2 the framework in which the questions are asked?

3 A. I think you'd have to see a psychologist, an
4 expert in consumer psychology for why people's
5 answers are different.

6 Q. You just know that they are?

7 A. Yes.

8 Q. How do you know that, sir?

9 A. From studying and reading in the field.

10 Q. How would you as an expert in opinion
11 survey research know what order to put the
12 questions?

13 A. Based on experience plus readings in the
14 field.

15 Q. What experience have you had in the
16 area of performing studies concerning cigarette
17 smoking and health?

18 A. I've already told you that this was the only
19 one about that. However, the principles of a
20 questionnaire are not really 100 percent
21 dependent, or even not dependent, on the subject
22 matter per se in terms of principles of
23 questionnaire design.

24 Q. What are the principles of
25 questionnaire design?

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D. Needles - direct

1 A. There are many of them. I couldn't count
2 them all now.

3 Q. You tell me the principles are the
4 same. What are you referring to?

5 MR. SILFEN: Objection to the form of
6 the question.

7 Q. Let me just say one thing, Mr.
8 Needles. I want to protect Mr. Silfen's interests
9 but I also want to finish my questions before he
10 has to jump in and make his objection so please
11 hold your response until he has had an
12 opportunity to put his objection on the record.
13 That way he won't interrupt my questions.

14 MR. SILFEN: You can disregard any
15 advice from Mr. Edell. You just answer
16 questions. I'll make my objections. There's an
17 objection to the form of the question. Why don't
18 you repeat it and keep going.

19 (Question read.)

20 A. I'm referring to a whole body of knowledge
21 about forms of questions and sequences of
22 questions.

23 Q. Not specific principles?

24 A. I think this body of knowledge encompasses
25 many, many, many opinion principles.

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D. Needle - direct

1 Q. Tell me about the principles you
2 applied in preparing the questionnaire that you
3 used in this survey.

4 A. I made the questions objective, non-leading
5 questions. I designed the questions in such a way
6 as to counteract any possibility of sequence bias
7 and I asked the questions in a context that I felt
8 the general public would understand.

9 Q. How did you test the validity of the
10 organization of the questionnaires?

11 A. I did a pilot survey.

12 Q. What did that pilot survey reveal?

13 A. It revealed that the general public appeared
14 to understand the questions and were able to
15 answer them and that there didn't appear to be any
16 confusion among respondents as to what we were
17 trying to attain.

18 Q. Did you consult with anyone at
19 Audits & Surveys in performing this survey?

20 A. Consult in what record?

21 Q. Speak to, talk to, communicate in
22 writing.

23 A. No. The survey was designed by myself with
24 others at Audits & Surveys.

25 Q. But you didn't discuss the survey with

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D. Neadle - direct

1 anyone at Audits & Surveys in the context of how
2 it was performed or whether the results were valid
3 or not valid, whether the organization of the
4 question was good or bad. You didn't speak to
5 anybody in that regard. Is that correct?

6 A. Only I spoke with the attorneys in terms of
7 the population or universe we were going to study
8 but not in terms of how the sample would be drawn
9 or executed or how the questions would be
10 formulated or sequenced.

11 Q. Did you show the questionnaires to the
12 lawyers before you conducted your pilot survey?

13 A. I believe so.

14 Q. Why do you do that?

15 A. I think it's normal procedure to show a
16 client what you are doing.

17 Q. Did you do this in person or did you
18 send it by mail? I haven't received any
19 correspondence to or from you or these lawyers.

20 A. I don't recall whether -- I believe it was
21 done by phone but I'm really not 100 percent
22 positive.

23 Q. Were there any comments from the
24 lawyers?

25 A. There probably were but no changes in the

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2017010888

D. Needie - direct

1 questionnaire came as a result of any comments
2 they made.

3 Q. With whom did you discuss the
4 questionnaire?

5 A. I believe it was Tom Silfen and I may have
6 also discussed it with Barbara Kacir. I don't
7 remember for sure.

8 Q. From Jones, Day? You don't know?

9 A. I think that's who she is with but I
10 wouldn't swear to it.

11 Q. Who else at Audits & Surveys did you
12 work with in designing this survey?

13 A. I worked with Wendy Kreisberg who was the
14 project director on the study for me and I worked
15 with I believe it was Lester Frankel and Paul
16 Flyer on the sample design.

17 MR. EDELL: Let's take a break and let
18 you finish your cigarette.

19 (Short break.)

20 (Needle Exhibits 1 to 8 marked for
21 identification.)

22 Q. Mr. Needie, I show you what has been
23 marked Needle Exhibit 8 for identification. Tell
24 us what that is, sir.

25 A. It's a copy of notes I made at a meeting on

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2017010889

D. Neadle - direct

1 July 28, 1985.

2 Q. The first three pages are notes of
3 that meeting, sir?

4 A. Yes.

5 Q. The fourth page is what?

6 A. Notes from a conversation on August 2, '85.
7 The next page is a memorandum to me from Paul
8 Flyer in August of 1985 and the next page are
9 notes I made in a conversation with Wendy
10 Kreisberg on August 27, '85.

11 Q. Let's go through your notes, please.
12 It says, "64 surgeon general report." Is this
13 just to give you a chronology of events?

14 A. These were things that the attorneys said in
15 the meeting.

16 Q. Why did you write them down?

17 A. I guess I was taking notes of what the
18 conversations were. I don't know that I had a
19 specific objective in mind in writing them down.

20 Q. After you have these four different
21 events, the surgeon general's report, the package
22 warning, the change in package warning and the
23 warning on advertising, there's a line and then
24 you have a capital A.

25 A. Yes.

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D. Neadle - direct

1 Q. Can you read that, please?

2 A. "What comes to mind regarding cigarette
3 advertising, place of warning in response." I'm
4 reading these as full notes, full words, even
5 though many of the words here are brief, in my own
6 shorthand.

7 Q. What does that mean, sir? Not your
8 statement but what does this writing mean?

9 A. That's an issue that was discussed as a
10 possible thing that the study might deal with,
11 that a study might deal with, what would come to
12 mind is cigarette advertising, and would anything
13 about warnings be in response to that.

14 Q. What do you mean by would anything be
15 in response to the cigarette advertising?

16 A. I'm sorry. Could you repeat the question?

17 Q. I don't understand what you mean by
18 saying --

19 MR. EDELL: Read back his statement
20 and that way I can use his precise language.

21 (Answer read.)

22 A. What comes to mind regarding cigarette
23 advertising -- that's a potential issue to
24 investigate -- among the public and would warnings
25 come up, cigarette warnings come up in response to

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D. Neadle - direct

1 that.

2 Q. Arnold & Porter decided not to look
3 into that issue?

4 MR. SILFEN: Objection to the form of
5 the question.

6 Q. Did they or didn't they, sir? Did
7 they ask you to look into that issue as to what
8 would come to --

9 A. They didn't ask me to look into that issue.
10 It was a possible issue to discuss to look into.
11 It wasn't a request, look into the issue of
12 cigarette advertising and the place of the warning
13 in response to that. It was one of the potential
14 areas of investigation.

15 Q. That potential area of investigation
16 was not looked into. Correct?

17 A. Not in that form.

18 Q. Did you look into the issue of what
19 comes into the minds of the American public
20 regarding cigarette advertising?

21 A. No, I did not.

22 Q. Why?

23 A. It wasn't one of the issues that were
24 finally decided to be examined.

25 Q. Who decided as to what issues were

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D. Neadle - direct

1 finally to be examined in this study?

2 A. There was a lot of discussion. I believe
3 the generalized issues that were to be studied
4 were probably a result of the attorneys.

5 Q. Arnold & Porter?

6 A. I believe there was more than Arnold &
7 Porter represented at this meeting.

8 Q. Shook, Hardy & Bacon?

9 A. I don't recall but I believe there were
10 three law firms present or representatives of
11 three law firms present.

12 Q. Do you remember the names of the
13 representatives present?

14 A. I believe Alan Purvie and Barbara Kacir and
15 Tom Silfen.

16 Q. Was anyone else present from Audits &
17 Surveys other than yourself at this meeting?

18 A. I don't recall.

19 Q. Do you have a practice to dictate
20 memos regarding meetings with clients when you
21 meet with the clients?

22 A. No, I don't have such a practice.

23 Q. Even when you are working on a survey
24 with other people so that they know what's going
25 on at different meetings if they are not in

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2017010893

D. Needle - direct

1 attendance at those meetings?

2 A. Not usually. I would usually verbally brief
3 them.

4 Q. Read underneath that, the next
5 sentence. What does it say?

6 A. "Knowledge of cigarette warning, what does
7 it mean."

8 Q. Did you look into that issue, sir, as
9 to knowledge of the cigarette warning and what
10 does it mean?

11 A. Not specifically the warnings, no.

12 Q. That was another issue that you didn't
13 finally decide to look into?

14 A. That's correct.

15 Q. The decision not to look into that
16 issue was decided by the lawyers. Is that
17 correct?

18 A. In that form it was decided not to look into
19 it. There were a number of options of
20 investigating awareness of smoking dangers and
21 they overlapped to some extent.

22 Q. I understand that. What I'm asking
23 you specifically is with regard to the issue of
24 knowledge regarding cigarette warnings and what
25 they mean --

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2017010894

D. Neadle - direct

1 A. We did not look into that issue.

2 Q. That was a decision made by the
3 lawyers. Correct?

4 A. I would guess so.

5 Q. What does it say underneath that?

6 A. "Percent of smokers will get lung cancer."

7 Q. You looked into that issue. Correct?

8 A. Yes.

9 MR. EDELL: Mr. Bleakley, if you want
10 to take a break for you and Mr. Silfen to talk --

11 MR. BLEAKLEY: When I have a message
12 to communicate to Mr. Silfen during the
13 deposition, I'll do so. If you have a problem
14 with it, then you can call the magistrate and tell
15 him.

16 MR. EDELL: I'll take a break until
17 you are finished.

18 MR. SILFEN: Take a break.

19 MR. EDELL: Thank you.

20 (Short break.)

21 MR. SILFEN: Go ahead.

22 (Discussion off the record.)

23 MR. BLEAKLEY: I have nothing to say
24 on the record.

25 MR. SILFEN: Go ahead with your

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2017010895

D. Neadle - direct

1 questioning.

2 MR. EDELL: Off the record there was a
3 conversation between Mr. Bleakley and myself
4 concerning what questions I might be permitted to
5 ask this witness. I didn't get very far when I
6 asked Mr. Bleakley to put his statement on the
7 record. I'm looking to Mr. Silfen. I don't know
8 which one of the people from Arnold & Porter I
9 should really look to for some direction in that
10 regard.

11 MR. SILFEN: What the record doesn't
12 show is that your manner when Peter Bleakley
13 attempted to talk to me to get this thing done was
14 hostile and ridiculously combative. Any attempt
15 to handle this thing pleasantly, which I tried to
16 do by having someone call promptly, is discouraged
17 by your way of handling this, so what we will do
18 is very simply when we take a break, I will
19 communicate with the lawyers and I will
20 communicate to you on the record. Now go ahead
21 and ask questions.

22 MR. EDELL: I would greatly appreciate
23 that.

24 MR. BLEAKLEY: Cut it out. Act like a
25 grown-up and ask questions.

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2017010896

D. Neadle - direct

1 MR. SILFEN: Go ahead and ask
2 questions.

3 MR. EDELL: I resent your
4 mischaracterization of my statement when you and
5 Mr. Bleakley are -- walking around making
6 conversation and distracting me from trying to ask
7 questions.

8 MR. BLEAKLEY: Go on with the
9 deposition. Get it going.

10 MR. SILFEN: Go on with your
11 questioning.

12 MR. EDELL: Could you read back the
13 last question, please.

14 (Question read.)

15 Q. Who decided that that was one of the
16 issues that you were going to look into, sir?

17 A. I can't recall specifically.

18 Q. Was it the lawyers, be it Arnold &
19 Porter or someone from Shook, Hardy & Bacon or
20 someone from Jones, Day?

21 A. I can't recall specifically that.

22 Q. Who gave you directions as to which
23 issues to look into in this survey?

24 A. There was a general discussion of many
25 issues or potential issues. I can't recall who

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2017010897

D. Neadle - direct

1 specifically said what or the total process by
2 which the issues that we wound up with were
3 decided upon.

4 Q. I'm not asking for the name of the
5 lawyer, sir, who said that it would be okay to
6 look into a particular issue but whether or not it
7 was the lawyers who said it's okay to look into
8 this issue.

9 MR. SILFEN: Object to the form of the
10 question.

11 MR. TUCKER: Object to the form of the
12 question.

13 A. I just said I can't recall the exact
14 process. There was a lot of discussion and I
15 can't recall the exact process by which the end
16 results of specifically which issues should be
17 investigated and which should not and which
18 overlap with others came about.

19 Q. Were there any issues that you thought
20 should be looked into that weren't?

21 A. I don't think so.

22 Q. Did you make any recommendations to
23 look into certain issues to the lawyers?

24 A. I don't believe I recommended any specific
25 issues.

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2017010898

D. Needle - direct

1 Q. Could you read the next sentence, sir?

2 A. Analysis by degree of smoking,

3 non-smoker-heavy smoker.

4 Q. Was that done in the study?

5 A. In a form, yes.

6 Q. What do you mean by that form?

7 A. There is an analysis of never smokers,

8 former smokers and current smokers.

9 Q. How did you define former smokers?

10 A. I would have to see a copy of the
11 questionnaire to recall the exact definition.

12 Q. Was there any attempt to break it down
13 between light smokers and heavy smokers, moderate
14 smokers?

15 A. I don't believe so.

16 Q. Why was that?

17 A. I felt that the more pertinent break or the
18 one that might show more differences or contrasts
19 would be the never smoker, former smoker, smoker
20 as opposed to degrees of smoking.

21 Q. What did you base that on?

22 A. Judgment.

23 Q. What judgment?

24 A. Mine.

25 Q. What studies have you ever done in

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2017010899

D. Neadle - direct

1 this area upon which you made that judgment?

2 MR. TUCKER: Object to the form of the
3 question.

4 A. I've done a lot of studies regarding
5 people's awareness of various things, and degree
6 of awareness tends to be less sensitive than
7 awareness of a particular behavior pattern versus
8 a non-participant in that particular behavior.

9 MR. EDELL: Could you read that back,
10 please.

11 (Answer read.)

12 Q. It doesn't make a difference to what
13 extent they participate in that behavior. Is that
14 correct?

15 A. No. It could make a difference. My feeling
16 is in most studies the biggest difference is
17 between the participants and non-participants,
18 although there could be differences by degree of
19 participation.

20 Q. Can you read the next sentence? Again
21 we are talking about Neadle Exhibit 8, right?

22 A. That's correct. "Show ads with warning --
23 what does it communicate, warning versus pleasure,
24 healthy, happy people."

25 Q. You didn't look into that issue, did

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D. Needle - direct

1 you, sir?

2 A. That's less of an issue than a possible
3 approach. We didn't use that approach.

4 Q. Did you show any of the people who
5 were interviewed ads?

6 A. No, we did not.

7 Q. Did you show them warnings?

8 A. No, we did not.

9 Q. Did you ask them what any cigarette
10 advertisements meant to them?

11 A. No, we did not.

12 Q. Is it possible to conduct a survey to
13 ascertain what cigarette advertisements mean to
14 people?

15 MR. TUCKER: Object to the form of the
16 question.

17 A. I believe it is possible to conduct such a
18 study.

19 Q. How do you do that?

20 A. I don't know that I could design it right
21 here. I need time to design it.

22 Q. In any event, you didn't look into the
23 issue of what cigarette advertising with warnings
24 communicated to people because you never showed it
25 to the people. Right?

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D. Needle - direct

1 A. Not because we never showed it to the
2 people. I didn't look into that issue.

3 Q. Who decided not to look into that
4 issue?

5 A. I believe I've already said I can't really
6 recall the total discussion and process by which
7 the conclusions as to which issues would be
8 included in the study was reached.

9 Q. Did you decide to exclude that?

10 MR. BLEAKLEY: Object to the form of
11 the question.

12 A. Showing ads with warning was an
13 impossibility for a telephone study. Therefore,
14 the methodology by itself would exclude that
15 procedure.

16 Q. But you could have performed a survey
17 which would have permitted you to show ads to
18 consumers and conduct an interview process,
19 couldn't you?

20 A. Yes, we could have.

21 Q. You conduct these sorts of surveys all
22 the time, don't you, sir?

23 MR. SILFEN: Object to the form of the
24 question.

25 Q. Non-telephone surveys.

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2017010902

D. Neadle - direct

1 A. Yes.

2 Q. Sometimes you perform surveys for
3 clients which include both telephone surveys and
4 face-to-face interviews. Correct?

5 A. Correct.

6 Q. There's nothing that would have
7 precluded you from doing that in this case?

8 A. That's correct.

9 Q. Turn to the second page, please, where
10 it says capital B period. Would you read that,
11 please?

12 A. Capital B?

13 Q. Isn't there a capital B?

14 A. I'm sorry. This is stapled incorrectly. I
15 was on page three. Yes. B.

16 Q. Would you read that, please.

17 A. "What have you heard re smoking, what have
18 you heard re smoking and health. What have you
19 heard re smoking and cancer, et cetera."

20 Q. Did you look into those issues, sir?

21 A. Not in this form but yes.

22 Q. What do you mean by not in this form?

23 A. Well, I would have to have a copy of the
24 questionnaire to show what the form, specific form
25 was.

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2017010903

D. Neadle - direct

1 Q. You don't recall without looking at
2 the questionnaire?

3 A. Well, we asked, I believe we looked into the
4 issue of smoking and health relationships.

5 Q. Can you read what appears next to page
6 two of Neadle Exhibit 8.

7 A. "Measure, awareness not belief, high
8 awareness regardless of source."

9 Q. What do you mean by "high awareness
10 regardless of source"?

11 A. Would there be high awareness without regard
12 to the specific source of that awareness.

13 Q. Why was the source of the information
14 not important, sir?

15 A. People can become aware of things from a
16 whole host of sources. I don't believe we could
17 list them all but the general concept that we were
18 getting towards was to what degree is the public
19 aware of cigarettes' health relationships and not
20 where it came from.

21 Q. What was your understanding as to why
22 it was not important to look into the beliefs
23 concerning the health hazards of cigarette
24 smoking?

25 MR. SILFEN: I'm going to give you a

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2017010904

D. Needle - direct

1 little caution, Mr. Edell. I'm going to start
2 objecting to the extent that you are asking him
3 the whys that may have been related to him by
4 attorneys so if you want to avoid that objection,
5 couch your questions accordingly.

6 Q. Do you want to answer the question,
7 sir?

8 MR. SILFEN: Read back the question.
9 (Question read.)

10 MR. SILFEN: Let me caution you, Mr.
11 Needle, that we have a work product privilege and
12 we are going to object to the extent that Marc is
13 asking you for something the attorneys may have
14 told you about their thought processes and their
15 reasoning. So far Marc has been asking you did
16 the attorneys decide this, did the attorneys
17 decide that. That's okay. If you are going to
18 answer for yourself for your own understanding,
19 that's fine. I caution you not to repeat what may
20 have been told to you of the attorneys' reasoning
21 for their actions in this case.

22 A. That was a note of mine that the attorneys
23 felt that the issue they wanted measured was
24 awareness.

25 Q. They didn't want you to look into the

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2017010905

D. Neadle - direct

1 issue of beliefs concerning cigarette smoking and
2 health? Is that correct?

3 MR. BLEAKLEY: Object to the form of
4 the question.

5 A. They said they want to look into the
6 awareness. I'm not sure if anyone said don't look
7 into belief. That was my note of the distinction.

8 Q. You were led to believe that they were
9 not concerned with looking into the issue of --

10 MR. SILFEN: Object to the form of the
11 question.

12 MR. EDELL: Can I finish, Mr. Silfen?

13 MR. SILFEN: Sure you can. I thought
14 you were done but I'm going to object anyway.

15 MR. EDELL: Would you read that back,
16 please.

17 (Question read.)

18 MR. SILFEN: Objection to the form of
19 the question.

20 MR. EDELL: I haven't finished.

21 MR. SILFEN: Finish.

22 Q. Mr. Neadle, you were led to believe
23 that the attorneys were not interested in looking
24 into the issue of what beliefs people had
25 concerning cigarette smoking and health. Is that

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2017010906

D. Needle - direct

1 correct?

2 MR. SILFEN: Objection to the form of
3 the question. Marc, I think we are at that line
4 that I was talking about and I'll tell you again,
5 if you want answers to questions, don't ask him
6 the whys of what the attorneys did or said. We
7 haven't done that in any of the depositions. We
8 are not going to do it now so why don't you try
9 another question.

10 MR. EDELL: I don't understand what
11 your comments mean, Mr. Silfen.

12 MR. SILFEN: My comment is, at this
13 point I'm saying that you are inquiring into work
14 product and you should ask another question. I'll
15 try to be liberal about this. I tried to be
16 liberal so far.

17 MR. EDELL: Does that mean you are
18 directing the witness not to answer the question?

19 MR. SILFEN: Yes. Maybe you can
20 reformulate the question so it will work better
21 but that particular form of the question I'm
22 objecting to.

23 Q. What led you to write down "not
24 belief"?

25 A. I believe it was my distinction from

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2017010907

D. Needle - direct

1 awareness.

2 Q. Is there a difference between
3 awareness and belief?

4 A. Yes.

5 Q. Did you inquire in this survey as to
6 people's beliefs concerning cigarette smoking and
7 health?

8 A. Yes.

9 Q. Which questions inquired into people's
10 beliefs concerning cigarette smoking and health?

11 A. I would have to look at a questionnaire but
12 I believe it was question three.

13 Q. How do you define belief, sir, in the
14 context of your being an expert in opinion survey
15 research?

16 A. What people think is the truth.

17 Q. What was it about question number
18 three that reflected people's beliefs concerning
19 cigarette smoking and health?

20 A. I would have to look at a copy of the
21 question so I don't misquote anything.

22 Q. Let's take a look at Needle Exhibit
23 1. It looks like the questionnaire from your
24 pilot project. Is that correct, sir?

25 A. Yes. That is a questionnaire from the pilot

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2017010908

D. Needle - direct

1 project.

2 Q. Is number three the question in the
3 pilot project which you believe would reflect an
4 individual's beliefs concerning cigarette smoking
5 and health?

6 A. Yes, with specific reference to lung cancer.

7 Q. What about that question, sir, would
8 reflect an individual's beliefs concerning
9 cigarette smoking and lung cancer?

10 A. People are being asked what they think, how
11 many smokers do they think will get lung cancer
12 because they smoke.

13 Q. Is there any indication that if they
14 didn't know how many people out of 100 would die
15 from lung cancer that they were to guess?

16 MR. SILFEN: Let me hear the question
17 back.

18 (Question read.)

19 MR. SILFEN: Objection to the form of
20 the question.

21 A. The question doesn't ask about dying.

22 Q. Is there any indication in question
23 three that if they, they being the people who were
24 being interviewed, didn't know how many people out
25 of 100 smokers would develop lung cancer they were

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D. Needle - direct

1 to guess as to what that number was going to be?

2 Is that correct?

3 MR. SILFEN: Let me hear the
4 question.

5 (Question read.)

6 MR. SILFEN: Objection to the form of
7 the question.

8 A. Yes.

9 Q. If a person answered in the narrative
10 portion of the questionnaire -- I believe that
11 would be question number one, sir. Do you see
12 that -- that they didn't think that cigarette
13 smoking caused lung cancer, would you expect for
14 them to answer number three by indicating a
15 certain number of people who would die or who
16 would contract lung cancer?

17 MR. SILFEN: Hold it. Objection to
18 the form of the question.

19 THE WITNESS: Could you read that
20 back.

21 (Question read.)

22 MR. SILFEN: Objection to the form of
23 the question.

24 A. They might.

25 Q. What would that mean from a research

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2617310910

D. Neadle - direct

1 survey perspective, that in the narrative portion
2 of question number one they said I don't think
3 cigarette smoking causes lung cancer but yet in
4 number three, the person indicates that twenty out
5 of a hundred people were going to contract lung
6 cancer from their smoking?

7 MR. SILFEN: Objection to the form of
8 the question.

9 A. I would have to look at the answer
10 specifically for respondents like that to look at
11 their pattern. I can't tell you specifically what
12 one respondent might say, might mean.

13 Q. What would you look for?

14 A. I would look at their answers to all the
15 questions.

16 Q. What other answers would you look at
17 that would help you resolve the question as to why
18 somebody would answer those two questions
19 apparently in a different way?

20 MR. TUCKER: Object to the form of the
21 question.

22 MR. SILFEN: Objection to the form of
23 the question. You can answer.

24 A. I would have to see what the rest of what
25 they filled in or their narrative was. I would

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2017010911

D. Neadle - direct

1 have to see what their answers were to the other
2 questions. People are not always 100 percent
3 logical. I would have to try to look at it to see
4 what they might mean.

5 Q. Could it be the sequence of the
6 questions that could account for a person in the
7 narrative portion, that being question number one,
8 indicating that he or she didn't believe that
9 cigarette smoking caused lung cancer and then in
10 number three indicate that some number of people
11 were going to develop lung cancer from their
12 cigarette smoking?

13 MR. SILFEN: Objection to the form of
14 the question.

15 A. I'm not sure I even understand that
16 question.

17 Q. I thought you indicated before that
18 the sequence of questions might affect the
19 responses from the people being interviewed. Am I
20 incorrect?

21 A. I said the sequence of questions could
22 affect results, yes.

23 Q. What I'm asking you is could the
24 sequence of questions in this questionnaire result
25 in someone who doesn't believe, at least in

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2017010912

D. Needie - direct

1 question number one, that cigarette smoking causes
2 lung cancer, indicate that some number of people
3 in answer to number three were going to contract
4 lung cancer from their cigarette smoking.

5 MR. SILFEN: Objection to the form of
6 the question.

7 A. It's hypothetical. I said I'd have to look
8 at the questionnaires.

9 Q. You didn't see any such responses in
10 the questionnaires that you reviewed. Is that
11 right, sir?

12 A. I don't recall. This was two years ago. I
13 don't recall.

14 Q. What would you do if you saw such a
15 response?

16 MR. SILFEN: Objection to the form of
17 the question? I'm going to caution the witness
18 not to speculate or guess. If Mr. Edell wants you
19 to guess, he'll tell you.

20 A. I don't know.

21 Q. You don't know what you would do as an
22 expert in survey research if you saw an answer to
23 your questionnaire where the person being
24 interviewed said I don't believe cigarette smoking
25 causes lung cancer in response to question number

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2017010913

D. Needle - direct

1 one but yet indicated in question number three
2 that they thought that some number of people might
3 contract lung cancer from their cigarette smoking?

4 MR. SILFEN: Objection to the form of
5 the question. He already answered it twice.

6 A. As I said, it's hypothetical. I'd have to
7 look at the whole thing.

8 Q. I'm asking you a hypothetical
9 question.

10 MR. SILFEN: He answered it twice.
11 Now he answered it three times. Move on.

12 MR. EDELL: Mr. Silfen, I don't think
13 you want him to answer the question.

14 MR. SILFEN: I don't want him to give
15 a different answer than he has given just because
16 you've asked it three times. Now he is done.
17 Move on.

18 Q. What other questions would you look
19 at, sir?

20 MR. TUCKER: Object to the form of the
21 question. He answered it.

22 MR. SILFEN: Object. You can give him
23 the same answer again and let's move on.

24 A. I would look at the rest of the respondent's
25 comments in question one and I would look at

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2617310914

D. Neadle - direct

1 question two.

2 MR. SILPEN: Now we are done and if
3 you ask him again, I'll direct him not to answer
4 the question.

5 MR. EDELL: Fine.

6 Q. What in question number two has
7 anything to do with the respondent's beliefs
8 concerning cigarette smoking and lung cancer?

9 A. Question two doesn't deal directly with
10 people's beliefs.

11 Q. Does it deal in any way with people
12 people's beliefs?

13 A. No. It deals with their awareness.

14 Q. How many people were involved in the
15 survey?

16 A. You mean how many respondents?

17 Q. Yes. How many respondents?

18 A. 3,500.

19 Q. If you had 50 percent of those
20 respondents indicating in response to number one
21 that they didn't believe cigarette smoking caused
22 lung cancer but yet they responded to question
23 number three by indicating that they thought some
24 number of people out of that 100 would develop
25 lung cancer from their cigarette smoking, what

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2017010915

D. Needle - direct

1 would you do?

2 MR. SILFEN: Objection to the form of
3 the question.

4 A. It's hypothetical. I would have to look at
5 the results.

6 Q. You'd have to look at each one of the
7 questionnaires?

8 A. I would have to look at the overall pattern
9 of results.

10 Q. What in the pattern would suggest to
11 you that there was a problem in the sequencing of
12 the questions?

13 MR. SILFEN: Objection to the form of
14 the question.

15 A. I don't know. I don't believe there's any
16 problem here with the sequencing of the questions.

17 MR. EDELL: Could you read the
18 question back, please.

19 (Question read.)

20 A. I don't believe there's a problem in the
21 sequencing of the questions.

22 Q. I understand that.

23 MR. SILFEN: That's how he answered it
24 before.

25 MR. EDELL: Can I finish, Mr. Silfen?

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20170310916

D. Neadle - direct

1 MR. SILFEN: Sure.

2 MR. EDELL: You keep saying sure but
3 you keep interrupting my questions.

4 MR. SILFEN: Only when you ask the
5 same question over again, and I'm going to keep
6 objecting.

7 MR. EDELL: Please save it until I
8 completed my question. I don't know how many
9 times I can ask the same courtesy but I'll
10 continue to do so.

11 Q. I asked you a hypothetical question.
12 Let's assume that 50 percent of the respondents
13 indicated in answer to number one that they did
14 not believe that cigarette smoking caused lung
15 cancer but yet the same 50 percent indicated in
16 response to number three that a certain number of
17 the 100 people who smoked would develop lung
18 cancer. What pattern would you expect to see in
19 your examination of the data if there were a
20 problem in the sequencing of the questions?

21 MR. SILFEN: Objection to the form of
22 the question.

23 A. Hypothetically if 50 percent made the
24 specific statement in question one that they did
25 not think that cigarette smoking was related to or

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2017010917

D. Needle - direct

1 caused lung cancer and then specifically gave a
2 number here, I would have some questions about the
3 wording of the questions being properly
4 communicated but that's hypothetical.

5 Q. How do you make sure that the wording
6 of the questions are properly communicated to the
7 respondents?

8 A. We did a pilot test and looked through the
9 responses and they appeared to be logical.

10 Q. Did you look through the responses
11 yourself?

12 A. I looked through some of them and other
13 members of my staff looked through all of them.

14 Q. When you said they looked to be
15 logical, what do you mean?

16 A. That people seemed to be understanding the
17 questions and answering them in the way they were
18 meant to be answered. They gave the right kinds
19 of replies.

20 Q. How does one determine whether or not
21 they gave the right kinds of replies?

22 A. That they were within the framework of the
23 question, the replies.

24 Q. How do you determine whether or not
25 they were within the framework of the question?

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2017310918

D. Neadle - direct

1 A. By reading them.

2 Q. What percentage of the questionnaires
3 did you read? Again with the pilot study that we
4 are talking about now.

5 MR. TUCKER: You are talking about him
6 personally?

7 MR. EDELL: Yes.

8 MR. TUCKER: Thank you.

9 A. I personally probably read twenty or thirty
10 percent of them and other members of my staff read
11 100 percent of them.

12 Q. Who were these other members, sir?

13 A. Wendy Kreisberg, who was our project
14 director.

15 Q. Anyone else?

16 A. Yes. Doris Carella.

17 Q. Who is Doris Carella?

18 A. Coding supervisor in our coding department.

19 Q. What training has she had in
20 determining whether or not the responses are or
21 are not logical?

22 A. At least five to ten years of doing coding
23 and reading questionnaires.

24 Q. Tell us what coding is, sir.

25 A. Coding is the process by which text

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2017010919

D. Neadle - direct

1 responses to open-ended questions are categorized.

2 Q. Is that subjective?

3 A. Coding is an informed judgment within, of
4 classifying response into a specific category
5 that's been set up or within the specific series
6 of categories that have been set up.

7 Q. Are there any potential problems in
8 categorizing responses to open-ended questions,
9 sir?

10 A. I'm not sure I understand what you mean by
11 potential problems.

12 Q. What I mean by potential problems is a
13 problem that might result from the coder
14 miscategorizing or improperly judging into which
15 category an open-ended response would fall.

16 A. Since it is an informed judgment, I can't
17 say that every single coding person or every
18 single one of us would always categorize something
19 in the same category. If that is the problem you
20 are talking about, yes, I think overall, since
21 samples of each coder's work is checked by someone
22 else to check the categorization, that that's
23 almost kind of a random kind of occurrence as
24 opposed to some systematic type of a problem.

25 Q. What guidelines did you provide the

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2017010920

D. Neadle - direct

1 coders in this study as to what categories they
2 should use for coding these open-ended responses
3 to question number one?

4 A. I reviewed lists of sample statements, the
5 suggested categories that would be set up to
6 categorize those statements and approved the final
7 set of categories before the coding was actually
8 done.

9 Q. Did you give them any guidelines
10 initially, though, sir, as to how to categorize
11 these responses?

12 A. Only to make sure they separate negative and
13 positive kinds of mentions about cigarettes or
14 smoking.

15 Q. How did you determine whether an
16 open-ended response was positive or negative?

17 A. They read the response.

18 Q. If I was to say that cigarette smoking
19 was addictive, is that a positive or negative
20 response?

21 A. That would be negative.

22 MR. BLEAKLEY: Mr. Edell, I'm going to
23 be leaving shortly and perhaps you should, if you
24 don't mind, take a minute and ask the questions
25 that you have about this other matter before I

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2017010921

D. Needle - direct

1 leave since I'm the one who checked with our
2 office on the protective order in that case. I
3 think the answer is that the questions you have,
4 Mr. Needle will be able to answer without
5 violating the terms of that protective order.

6 Q. Can you tell us the nature of the
7 survey that you performed for Arnold & Porter in
8 that matter that you thought you could not tell us
9 about because of this protective order, sir?

10 A. I did a survey of a TV commercial and got
11 people's reactions to it.

12 Q. What was the subject of the
13 litigation? What were the issues?

14 A. I believe the issue is that a particular
15 Advil commercial is misleading with regard to its
16 safety on the stomach or in the stomach.

17 Q. Did you perform a survey to ascertain
18 whether or not the commercial was or was not
19 misleading?

20 A. I performed a survey with a different
21 commercial.

22 Q. I'm sorry, sir?

23 A. I performed the survey with a different
24 commercial.

25 Q. What commercial did you perform a

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2017010922

D. Neadle - direct

1 survey?

2 A. With a Mediprin commercial.

3 Q. Did you make any determinations as to
4 whether or not that commercial was or was not
5 misleading?

6 A. I did not make any determination. I just
7 presented the results of the survey.

8 Q. What were the results of the survey?

9 A. I can't recall the numbers. Well,
10 approximately, it was about 83 or 84 percent of
11 all of the respondents in this particular survey
12 thought the Mediprin, as a result of seeing the
13 commercial, that Mediprin was a safe product for
14 them themselves to use.

15 Q. Was that a belief survey, sir?

16 A. No. It was a survey on what was
17 communicated by the commercial.

18 Q. Could you perform a similar survey
19 with regard to cigarette advertising?

20 MR. BLEAKLEY: Objection to the form
21 of the question.

22 A. There is no cigarette advertising on TV.
23 This was a study of a specific TV commercial.

24 Q. Could you perform a similar study of
25 print advertising for cigarettes?

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2017010923

D. Needle - direct

1 MR. SILFEN: Objection.

2 MR. BLEAKLEY: Objection to the form
3 of the question.

4 A. Yes, I assume we could.

5 Q. How would you go about that, sir?

6 A. I would have to think about that to design
7 it.

8 Q. Who did Arnold & Porter represent in
9 this matter that you performed this survey?

10 A. American Home Products.

11 Q. They manufacture what product?

12 A. Advil.

13 Q. Why was it that you performed this
14 survey with regard to Mediprin as opposed to
15 Advil?

16 MR. SILFEN: Objection.

17 MR. BLEAKLEY: I think he can answer
18 that question. Did you hear the question, Mr.
19 Needle?

20 THE WITNESS: Yes.

21 A. To be used as a control for a survey done by
22 someone for Johnson & Johnson.

23 Q. Do you know what position American
24 Home Products was taking in that litigation
25 vis-a-vis the issue of whether or not the

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D. Needle - direct

1 advertising for Advil was or was not misleading?

2 A. That the commercial is not misleading.

3 Q. What, if any, relevance did your
4 survey have to that issue?

5 MR. BLEAKLEY: Objection to the form
6 of the question.

7 A. It had relevance to the survey that was, to
8 a survey that was being submitted by Johnson &
9 Johnson.

10 Q. What relevance?

11 MR. BLEAKLEY: Objection to the form
12 of the question.

13 A. It was conducted using an identical set of
14 questions and techniques as was used in a survey
15 by someone for Johnson & Johnson.

16 Q. Was it the purpose of the survey to
17 show that you would get the same results with
18 Mediprin as you would for Advil?

19 MR. BLEAKLEY: Objection to the form
20 of the question.

21 A. The same or similar results.

22 Q. That was used by Arnold & Porter to
23 discredit the study performed with respect to
24 Advil. Is that correct?

25 MR. BLEAKLEY: Objection to the form

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D. Neadle - direct

1 of the question.

2 A. I'm afraid I can't answer that.

3 MR. EDELL: I'm finished with that
4 line of questioning.

5 Q. What do you do with the answers to
6 these questions when you get them, sir?

7 MR. SILFEN: Objection to the form of
8 the question. You may answer.

9 Q. Let's look at the questionnaire
10 itself. Take a look at question number one. What
11 do you do when you get a narrative response to,
12 for example, number one on Neadle Exhibit 8 for
13 identification?

14 A. We have our coding department make lists of
15 the specific verbatim responses and then set up
16 what they feel would be broad outlines. Kinds of
17 categories they would set up based on those
18 answers.

19 Q. After they set up these broad
20 categories, what do they do next?

21 MR. SILFEN: Your previous line was
22 with respect to the pilot. Is this the pilot or
23 the regular?

24 MR. EDELL: We are talking about
25 Neadle Exhibit 8 for identification. It's right

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D. Neadle - direct

1 in front of him.

2 THE WITNESS: That's the pilot study.

3 MR. SILFEN: The pilot study, fine.

4 THE WITNESS: Could you read the last
5 question.

6 (Question read.)

7 MR. SILFEN: Do you mean for him to
8 distinguish what he did with the pilot and what he
9 did with the main study or what?

10 MR. EDELL: If you don't understand
11 the question, object to the form of it and the
12 witness can answer if he understands, Mr. Silfen.

13 MR. SILFEN: Object to the form.

14 A. With respect to the pilot study
15 questionnaire in Exhibit 8, we then, they reviewed
16 them with, the coding supervisor reviewed these
17 with the project director and myself. We set up
18 some more detailed categories into which the
19 coding supervisor then classified the responses.

20 Q. When you say the coding supervisor
21 classified the responses, is this for the purpose
22 of input into a computer?

23 A. Yes, it is, but not in the pilot study.

24 Q. I'm going to show you some other
25 documents that we have marked which I believe are

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2017010927

D. Neadle - direct

1 related to the project study. Just tell us what
2 they were. Neadle Exhibit 2 for identification,
3 can you tell us what that is?

4 A. These are interviewer specifications for the
5 pilot study.

6 Q. Did the specifications change for the
7 final study?

8 A. Yes, they did.

9 Q. In what way did they change?

10 A. I don't know that I can tell you all the
11 changes without comparing them but certainly the
12 assignment changed.

13 Q. Can you tell us what Neadle Exhibit 4
14 is, sir?

15 A. Neadle Exhibit 4 is a worksheet used by our
16 coding department with respect to the pilot study.

17 Q. The response categories, those are
18 categories that are created by the coder. Is that
19 correct?

20 A. Yes, these are.

21 Q. I show you what has been marked Neadle
22 Exhibit 5. Can you tell us what that is.

23 A. That is another worksheet used by our coding
24 department with respect to the pilot survey.

25 Q. Who prepared that, sir?

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D. Neadle - direct

1 A. I believe Doris Carella.

2 Q. Did you make any changes to this?

3 A. I don't recall whether I made changes to
4 this or an earlier version or exactly what. It's
5 two years ago.

6 Q. Tell us what Neadle Exhibit 6 is,
7 sir.

8 MR. BLEAKLEY: Could I just talk to
9 Mr. Silfen for just one second?

10 MR. EDELL: You certainly may.

11 (Short pause.)

12 A. It is another worksheet used by our coding
13 department. I can't identify it as to whether it
14 was for the pilot study or the main full study
15 that was reported.

16 Q. Did you review that, sir?

17 A. Did I review this particular document?

18 Q. In the context of your putting
19 together the final study that you had conducted
20 for Arnold & Porter in this litigation.

21 A. I'm not sure whether this is from the final
22 study or for the pilot so I can't tell you whether
23 I reviewed it in order to put together the full
24 study.

25 Q. Try Neadle Exhibit 7. Do you know

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D. Neadle - direct

1 what that is?

2 A. It's a variety of different documents.

3 Q. That's how I got them, stapled
4 together like that, so maybe you can help clarify
5 it.

6 A. The first page are the results to question
7 one for the first phase of the pilot study and for
8 the second phase of the pilot study in total and
9 by whether or not the respondent was a current,
10 former or never smoker. The second page are the
11 results to question three for the second wave of
12 the pilot study in total. No, I'm sorry. It is
13 the results to the question on how many cigarette
14 smokers will get lung cancer because they smoke
15 for the second wave of the pilot study. I can't
16 identify the question number because I don't have
17 the questionnaire for the second phase of the
18 pilot study here.

19 Q. When you say the second phase of the
20 pilot study, there were two phases to the pilot
21 study?

22 A. Yes, there were.

23 Q. Why was it done in two phases?

24 A. After the first phase, I felt we should add
25 a question on whether or not people were smokers

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D. Neadle - direct

1 for analytic purposes so we did a second wave of
2 the pilot study to test that question.

3 Q. Getting back to Neadle Exhibit 8, I
4 believe, your notes, turn to page three, please.

5 A. Yes.

6 Q. Could you read that to us.

7 A. High percentage of people have high concern
8 re cigarette health concerns. It said re
9 cigarette and cigarette advertising. The
10 cigarette advertising was crossed out in my notes.

11 Q. Where did you get that information?

12 MR. SILFEN: Objection to the form of
13 the question.

14 A. I don't believe it was information as much
15 as it was an issue.

16 Q. It was an issue that you were going to
17 look into?

18 A. Yes.

19 Q. Did you look into that issue in this
20 case?

21 MR. SILFEN: Objection to the form of
22 the question.

23 A. I looked into the issues of awareness and
24 belief and health concerns. I'm not sure if it
25 could be, if it was in quite the framework of the

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D. Needle - direct

1 way these notes are.

2 Q. Which question in your study performed
3 for Arnold & Porter reflects the issue of whether
4 people have a high concern regarding cigarettes
5 and health concerns?

6 A. The issue of concern is not but the issue of
7 awareness and belief is.

8 Q. What's the difference between
9 awareness, belief and concern?

10 A. Awareness is, I don't know how to describe
11 it, what people are aware of, what has come across
12 their mind and they have remembered. Belief is
13 what they think is the truth. A concern to me
14 would be a measure of, kind of the degree of worry
15 or degree to which they think that's a problem per
16 se.

17 Q. Let's take a look at number two on
18 page three. Could you read that for us.

19 A. "What does cigarette warning mean. What's
20 the contribution of warning to serious health
21 concern, especially re lung cancer. Is it life
22 threatening or shortening."

23 Q. Did you look into that issue of what
24 does the cigarette warning contribute to serious
25 health concerns, especially lung cancer?

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2617010932

D. Needle - direct

1 A. No. As I said, we didn't get into, the
2 study doesn't get into the degree of concern
3 people have and it doesn't get into the cigarette
4 warning per se.

5 Q. I assume that you don't know how it
6 came about that you decided not to look into that
7 issue. Is that correct?

8 A. That's correct.

9 Q. You don't know whether it was the
10 Arnold & Porter lawyers or the Shook, Hardy &
11 Bacon lawyers or the Jones, Day lawyers who told
12 you not to look into that?

13 MR. TUCKER: Object to the form of the
14 question.

15 A. I don't recall the specific. As I said
16 before, we are talking about a conversation of
17 over two years ago and there was a lot of
18 discussion of a lot of potential questions and
19 issues and I don't recall the exact process by
20 which we got to the issues that were finally
21 agreed to as the ones to be included in the
22 survey.

23 Q. Tell us about your general
24 recollection of this process.

25 A. The lawyers discussed a lot of different

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2017010933

D. Neadle - direct

1 potential issues, questions, mostly issues, I
2 guess, or I'm using question in a broad sense, not
3 to mean a specific question wording, that are
4 possible topics for a survey to provide some data
5 on and I can't really go through their thought
6 process but at the end we wound up with the issues
7 or objectives, issues that were included in the
8 study.

9 Q. Normally when you have a client that
10 comes in to ask you to do some kind of research
11 survey for them and they say look, I want you to
12 look into these issues, do you decide what issues
13 they ultimately should or should not inquire into?

14 MR. SILFEN: Objection to the form of
15 the question.

16 A. No, I don't usually decide what issues they
17 should look into or should not although sometimes
18 I will advise them on issues that I think are
19 outside the scope of the kind of study that's
20 envisioned or that would be difficult to obtain
21 valid information on.

22 Q. Isn't the usual practice that your
23 clients ultimately decide what issues they want
24 you to look into, sir?

25 MR. SILFEN: Objection to the form of

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D. Neadle - direct

1 the question. You can answer.

2 A. The client usually decides the issues, yes.

3 Q. Do you have any reason to believe that
4 that was not the case here?

5 MR. SILFEN: Objection to the form of
6 the question. Go ahead.

7 A. No, I don't have any reason to believe that
8 that wasn't the case here.

9 Q. Your understanding as to who the
10 client is in this litigation is that it's Arnold &
11 Porter, Shook, Hardy & Bacon and Jones, Day. Is
12 that correct?

13 A. That's correct.

14 Q. Let's take a look at number three on
15 page three of Neadle Exhibit 8.

16 A. "Public overperceives danger, (probability
17 of getting illness)."

18 Q. Did you look into that issue?

19 A. I looked into the issue of what the public
20 perceives as the probability of getting lung
21 cancer as a result of cigarette smoking.

22 Q. Included in that perception was the
23 recipient's guessing as to what the probability
24 was that people would contract lung cancer. Is
25 that correct?

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D. Neadle - direct

1 MR. SILFEN: Objection to the form of
2 the question.

3 A. Yes. If a respondent could not answer it
4 offhand, they were probed as to their best
5 estimate or best guess.

6 Q. Would you read number four to us,
7 please.

8 A. "Everyone knows cigarettes are bad for
9 health."

10 Q. That was one of the issues that was
11 discussed with the lawyers?

12 MR. SILFEN: Objection to the form of
13 the question.

14 A. Well, the issue discussed, I would say from
15 this, is does everyone know or how many people
16 know.

17 Q. You put everyone in quotations. What
18 do you mean by that?

19 A. Probably because someone used that term.

20 Q. What do you mean somebody?

21 A. I don't believe everyone ever believes
22 anything or knows everything, knows anything, so
23 any time I would use "everyone knows something," I
24 would put it in quotes.

25 Q. Did you look into that issue?

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D. Neadle - direct

1 A. I looked into the issue of awareness of the
2 argument that cigarettes are bad for health. I
3 didn't look into what they specifically know.

4 Q. What's number five, sir?

5 A. Five is, "Awareness that 'health concern'
6 is part of advertising."

7 Q. What does that mean?

8 A. That would be a reference to the warning,
9 what would be the degree of awareness that there's
10 a warning in all cigarette advertising.

11 Q. You didn't look into that issue, did
12 you?

13 A. No, we did not.

14 Q. Underneath those five potential issues
15 is a notation, "Call Tom Silfen with
16 recommendations, 7-29." Correct?

17 A. That's correct.

18 Q. What recommendations?

19 A. The recommendations of the questionnaire
20 design that I would come up with.

21 Q. Tell us about that conversation.

22 A. I really don't recall the conversation.
23 It's two years ago. I don't recall the specific
24 conversation.

25 Q. Had you developed a questionnaire by

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D. Neadle - direct

1 7-29-857

2 A. Yes.

3 Q. Turning to the next page, there's an
4 entry for 8-2-85.

5 A. Yes.

6 Q. What is that, sir?

7 A. It says, "Illness linked directly to
8 smoking."

9 Q. What does that mean?

10 A. Is illness linked directly to smoking.

11 Q. Was that a telephone conversation or
12 was that just a note to yourself? How did it come
13 about that you wrote that down on August 2, 1985?

14 A. I don't recall.

15 Q. Underneath that there are two
16 sentences. Could you read that for us.

17 A. "1. What comes to mind re cigarettes.

18 2: What percent of cigarette smokers get illness
19 because they smoke? Lung cancer will get out of
20 100."

21 Q. Is that a result of a phone call with
22 one of the lawyers?

23 A. I believe points one and two are. I believe
24 the "will get out of 100" is a notation I made
25 myself as a way of obtaining information on

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D. Needle - direct

1 percent of smokers.

2 Q. With whom did you speak concerning
3 these notations?

4 A. I can't be sure.

5 Q. Turn to the next page. I believe it's
6 a memorandum from Paul Flyer to you.

7 A. Yes.

8 Q. It makes reference to a rotation?

9 A. Yes.

10 Q. Rotation of what, sir?

11 A. A rotation of question two in the pilot
12 study which was asked of approximately half the
13 respondents in one sequence and half the
14 respondents in a different sequence.

15 Q. Why did rotating those two have an
16 effect?

17 A. Because it provides respondents with a
18 different sequence of the same questions.

19 Q. How do you know what sequence to use,
20 then, if you see that you get a different effect?

21 A. We don't really know for sure in a scale
22 type question like this which sequence to use.
23 That's why we used both, each with half the
24 respondents, so we could in effect compute totals
25 based on an average of the two and also compare

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D. Needle - direct

1 whether in fact there are any differences.

2 Q. Is that what you did in the final
3 study?

4 A. Yes.

5 Q. Did you rotate any other questions?

6 A. No, I don't believe so.

7 Q. Why was that?

8 A. Well, this was the only subject matter
9 question which constituted a scale of ascendancy
10 or descendancy in questions or in items.

11 Q. Whose idea was it to rotate the
12 sequence in question number two?

13 A. I would guess it was mine although I can't
14 positively say that someone else in my office
15 didn't suggest that we should do it.

16 Q. Look at the last page of your notes,
17 please. Can you read them to us?

18 A. These are notes of a conversation with Wendy
19 Kreisberg, the project director on August 27. It
20 says, "Wave 1, sequence of responses to question
21 one."

22 Q. Can I ask you what does that mean,
23 sir? I thought there was only one, question one
24 was the open-ended question.

25 A. That's correct.

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D. Needle - direct

1 Q. So what was there about the sequence
2 to question number one that you were discussing
3 with Ms. Kreisberg?

4 A. The possibility of looking at the results by
5 the sequence of responses since many respondents
6 gave more than one response to the question.

7 Q. Did you do some type of analysis by
8 sequence?

9 A. No, we did not.

10 Q. Why?

11 A. We decided that we weren't going to use that
12 in the full-scale surveys so we didn't bother to
13 do.

14 Q. What's the next entry?

15 A. The next entry is N actuals 3,800.

16 Q. Is it the number of surveys?

17 A. The sample size, yes.

18 Q. It says 16 plus years?

19 A. Yes.

20 Q. Why did you use 16 years and older for
21 the survey?

22 A. Because the attorneys said they wanted to
23 measure the population 16 years of age and older.

24 Q. Underneath there you have 3,500 equals
25 55 percent plus what?

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D. Needle - direct

1 A. On price.

2 Q. What does that mean?

3 A. I believe that referred to the fact that I
4 had originally quoted an estimate to the attorneys
5 of what the survey would cost for a different
6 sample size and that with this sample size, that
7 it would make about a 55 percent difference in the
8 price.

9 Q. 55 percent less or greater than?

10 A. Greater since this was a larger sample size
11 than the original proposal.

12 Q. The original proposal was between 50
13 and \$100,000?

14 A. No.

15 MR. SILFEN: Objection to the form.

16 Q. I thought you said that the original
17 proposal was between 50 and \$100,000.

18 A. I believe what I said was that the cost of
19 the survey was between 50 and \$100,000.

20 Q. Sorry.

21 MR. SILFEN: Since you are finished
22 those notes, I will ask the usual quarter to one
23 question.

24 MR. EDELL: We can break for lunch if
25 you would like.

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2617010942

D. Needle - direct

1 (Luncheon Recess)

2 A F T E R N O O N S E S S I O N

3 (Exhibit Needle-9 marked for
4 identification.)

5 Q. Mr. Needle, I show you what has been
6 marked Needle Exhibit 9 for identification. It
7 has "Draft Subject To Revision" stamped on top,
8 and also "Confidential (#4918)." The designation
9 of 4918 is the survey that you performed, the
10 final survey that you performed for the lawyers in
11 this case. Correct, sir?

12 A. That's correct.

13 Q. Is that the entire draft of the report
14 which you prepared for Arnold & Porter, Jones, Day
15 and Shook, Hardy & Bacon?

16 A. (Examining document.) It's a draft of the
17 entire report without including the actual tabular
18 results.

19 Q. The actual tabular results were
20 included with the draft that you sent to whom,
21 sir?

22 A. I said this is a draft of the report
23 excluding the tabular results.

24 Q. Did you provide the tabular results to
25 anyone prior to the preparation of the final

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D. Neadle - direct

1 report in this matter?

2 A. Yes.

3 Q. To whom did you send them?

4 A. I believe to Arnold & Porter, Jones, Day,
5 Reavis and Shock, Hardy & Bacon.

6 Q. Were there any changes between the
7 draft and your final report?

8 A. I don't recall. I would have to compare the
9 two versions. I don't believe there were
10 substantive changes but I would have to compare
11 the two versions.

12 Q. Here is Neadle 10 for identification.
13 Tell us what that is.

14 (Neadle Exhibit 10 marked for
15 identification.)

16 A. (Examining document.) This appears to be a
17 copy of the final report.

18 Q. That included the tabular results of
19 the study?

20 A. Yes, it did.

21 Q. When was this report prepared, sir,
22 this being Neadle Exhibit 10 for identification?

23 A. I believe it was prepared during early 1986.

24 MR. EDELL: Would you mark this.
25 please.

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D. Neadle - direct

1 (Neadle Exhibit 11 marked for
2 identification.)

3 Q. We talked about the question of how
4 you defined a smoker and a former smoker
5 previously and you said you needed to take a look
6 at the questionnaire. Do you remember that?

7 A. Yes.

8 Q. I show you what has been marked Neadle
9 Exhibit 11 for identification. It appears to be a
10 questionnaire for the final survey, project 4918
11 for September of 1985. Tell us whether or not
12 that was in fact one of the questionnaires that
13 was used for that final survey.

14 A. (Examining document.) Yes, it is.

15 Q. Can you tell us now that you looked at
16 it how you defined former smokers?

17 A. Yes. Respondents defined it themselves.
18 They classified themselves as a current smoker,
19 former smoker or never smoker.

20 Q. Is there any indication as to what the
21 respondents meant by former smoker, whether they
22 smoked one cigarette once in their life or whether
23 they smoked ten cigarettes or ten packs or they
24 smoke for fifty years?

25 A. No.

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2017010945

D. Needle - direct

1 Q. Is there any indication as to how long
2 these people were smoking, sir, if they were
3 current smokers?

4 A. No.

5 Q. You didn't think that that was
6 important for your survey?

7 A. No. Yes, I didn't think it was important.

8 Q. It didn't make a difference whether or
9 not somebody was smoking two packs a day for 15
10 years as opposed to their taking up cigarettes
11 yesterday and smoke a pack a day or one cigarette
12 a day or two cigarettes a day?

13 A. When you say it didn't make a difference,
14 I'm not sure I know exactly what you mean.

15 Q. You didn't think it was an important
16 enough difference to take it into consideration in
17 your survey. Correct?

18 A. Not for the purpose for which I wanted to
19 use the question.

20 Q. What was the purpose for which you
21 wanted to use the question regarding smoking
22 behavior?

23 A. To determine whether or not there were major
24 differences in the responses to questions one
25 through three by whether people consider

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2017010946

D. Neadle - direct

1 themselves a smoker, a former smoker or a never
2 smoker.

3 Q. And deciding whether or not there were
4 or were not major differences, you didn't think it
5 was important to take into consideration the
6 number of years they were smoking or the number of
7 cigarettes that they were smoking. Is that
8 correct, sir?

9 MR. SILFEN: Objection to the form of
10 the question. You may answer.

11 A. I didn't think it was as important to
12 measure degree as it was to measure their own
13 self-classification of themselves.

14 Q. So there wasn't a single objective
15 standard by which people were to respond as to
16 whether they were former smokers or not. Is that
17 correct?

18 MR. SILFEN: You've asked the
19 question. He has answered. You can answer it
20 again.

21 A. The standard was their own perception of
22 where they stood on that scale.

23 Q. There's an indication on the bottom
24 here where it says, "Jim at above number doesn't
25 recall doing survey. Also it's a business." What

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D. Neadle - direct

1 does that mean, sir?

2 A. This respondent was called back to determine
3 his response to question number four because the
4 interviewer had indicated he had originally said
5 that he was a cigar smoker.

6 Q. What significance is the fact that he
7 didn't remember being called in the first
8 instance?

9 A. It means that it should have been validated
10 versus other interviews done by the same
11 interviewer.

12 Q. How do you do that?

13 A. We validated, we would call back then a
14 number of other interviews done by the same
15 interviewer to see if the interviewer in fact did
16 their interviews. If there's only one problem,
17 then we wouldn't. We would accept it because we
18 knew in the past that frequently respondents will
19 say no to validation questions because they don't
20 want to get on a list and they are afraid a second
21 call means getting on a list.

22 Q. Were there any instructions given to
23 the interviewers as to how they should conduct the
24 interview?

25 A. Yes.

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D. Needle - direct

1 Q. Where are those instructions?

2 A. I believe there was a copy in the materials
3 I turned over to counsel. I'm trying to recall
4 now whether the instructions were in writing or
5 whether they were only verbal. I believe there
6 was -- I don't recall now whether they were in
7 writing or not. I know there was a verbal
8 briefing. I don't recall whether there was a set
9 of written instructions or not. I would have to
10 look through the material.

11 Q. Who conducted the verbal briefing?

12 A. The interviewing supervisor.

13 Q. Who was that?

14 A. At the time it was Susan, I don't recall her
15 second name.

16 Q. Is she still with Audits & Surveys?

17 A. I don't know.

18 Q. Are the interviewers full-time
19 employees?

20 A. No. They are part-time employees for the
21 most part.

22 Q. What criteria do you use in hiring
23 those people?

24 A. I can't answer that question. The head of
25 our interviewing department would have to answer

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D. Neadle - direct

1 that question.

2 Q. Do you know if there's any educational
3 requirement?

4 A. I don't know what criteria he uses to hire
5 the people.

6 Q. Do you know what the length of
7 orientation is for these interviewers?

8 A. They have a general orientation of three to
9 five hours. They have an orientation or briefing
10 for each study, depending on the complexity of the
11 study.

12 Q. I'm talking about this specific study,
13 sir. How long was the orientation for the
14 interviewers in this study?

15 A. I believe it was less than one hour for the
16 study.

17 Q. How many interviewers did you use in
18 performing this study?

19 A. I don't know.

20 Q. You don't know whether it was one or
21 ten or twenty or fifty?

22 A. I know it was more than one. I don't know
23 how many were used.

24 Q. How were they paid?

25 A. By the hour.

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2017010950

D. Needle - direct

1 Q. On the third page there appears the
2 second question. Are those the questions that
3 were rotated?

4 A. Yes.

5 Q. For the purposes of inputting it into
6 the computer, how does the computer know which
7 questionnaire the information is coming from?

8 A. Which sequence?

9 Q. Yes.

10 A. It knows it by this box here.

11 Q. 31-2?

12 A. Yes. Approximately half the questionnaires
13 would have been marked 31-2. The other half would
14 have been marked 31-1. That indicates in the
15 computer which sequence the questions were in.

16 Q. The number that is placed under number
17 three, if there's no comment where it says no
18 comment, how is that put into the computer?

19 A. It's punched as 999. Is that what you
20 mean?

21 Q. Yes. What does it mean?

22 A. That's no answer.

23 Q. On some of these there's a zero in
24 front of the number. For example, on this one,
25 which we can mark as Needle Exhibit 12, there's a

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2017010951

D. Needle - direct

1 zero in front of the number. Is that for the
2 purposes of the computer?

3 A. Yes. It's a three-digit field.

4 (Needle Exhibit 12 marked for
5 identification.)

6 Q. On question number one, if somebody
7 responded to the question by simply indicating
8 smoking, then the interviewer was told to keep
9 asking what else comes to your mind. Is that
10 correct?

11 A. I'm sorry.

12 Q. Do you have the first question in
13 front of you?

14 A. Yes.

15 Q. Let's assume that I'm an interviewer
16 and I have received instructions from Audits &
17 Surveys. Okay?

18 A. Yes.

19 Q. And I get on the phone with an
20 interviewee and I ask the question, "When I
21 mention cigarettes, what comes to your mind," and
22 they say smoking. What do I say next?

23 A. Anything else.

24 Q. You get another response and you keep
25 on going anything else, anything else, anything

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2017010952

D. Neadle - direct

1 else until the person no longer has anything to
2 say. Is that right?

3 A. That's correct.

4 Q. So if the statement regarding
5 cigarette smoking and disease came out as the
6 tenth item in terms of this inquiry of the
7 interviewee, you didn't take that into
8 consideration. Is that correct?

9 MR. SILFEN: Objection to the form of
10 the question.

11 A. I'm not sure what you mean I didn't take it
12 into consideration. In what way?

13 Q. Is there any significance to the order
14 in which people relate to you what comes to their
15 mind when you ask a question like, "When I mention
16 cigarettes, what comes to your mind?"

17 A. I don't know if there's significance in the
18 sequence in which things come to their mind.

19 Q. You don't know because it's outside of
20 your field of expertise?

21 A. Yes.

22 Q. Are you finished?

23 A. Yes.

24 Q. If you look at the front of the
25 questionnaire, it says, "I am," and are they

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D. Neadle - direct

1 supposed to fill in their name there?

2 A. . Yes.

3 Q. "Of Audite & Surveys," and it goes on,
4 "I'm calling long distance and we are doing a
5 study about cigarette smoking." Does the fact
6 that you advise the interviewee as to the purpose
7 for your conducting the study bias their responses
8 in any way?

9 A. I don't believe it biases. We are not
10 telling them the purpose of the study but rather
11 the subject matter of the study.

12 Q. That in your opinion doesn't have an
13 effect on the responses that they give. Is that
14 correct, sir?

15 A. Knowing the subject matter, no, I don't
16 think it biases their response.

17 Q. Why is it that some surveys are
18 conducted where the questions are intermingled
19 among other questions?

20 MR. SILFEN: Objection to the form of
21 the question.

22 MR. EDELL: Maybe it's unarticulate.

23 Q. You haven't seen any surveys on
24 cigarette smoking and health so it's a little
25 difficult for me to ask the question but take it

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D. Neadle - direct

1 from me, there are surveys in which they
2 intermingle the questions other than those
3 specifically dealing with cigarette smoking and
4 health. In your opinion, is there a reason why
5 someone would do that from the perspective of an
6 expert in survey research?

7 MR. SILFEN: Are you done with your
8 question?

9 MR. EDELL: Yes, I am.

10 MR. SILFEN: Objection to the form of
11 the question. You don't have to take anything
12 from Mr. Edell. If you know he is right, that's
13 fine. If you don't, you don't have to accept it.

14 A. On the assumption that what you said is
15 true, I don't know what the reason could be.
16 There could be many reasons. I just don't know.

17 Q. Have you ever conducted a study where
18 the focus of the study, the subject itself, was
19 not disclosed up front and that the questions
20 concerning that subject were intermingled among
21 really unrelated questions?

22 MR. SILFEN: Objection to the form of
23 the question. You can answer.

24 A. Not where the question is dealing with the
25 prime subject was intermingled among others. I

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2017010955

D. Neadle - direct

1 have conducted studies where in the initial
2 introductory questions that we did not reveal the
3 subject of the study.

4 Q. Looking again at Neadle Exhibit 12,
5 could you turn to the third page, please. There
6 are handwritten numbers listed under the little
7 box where it says 31-2.

8 A. Yes.

9 Q. What's the significance of those
10 numbers?

11 A. In order to answer that question, I would
12 need a copy of our master code sheet.

13 Q. What does it look like? I tried to
14 put together all the materials that were furnished
15 to me by Mr. Silfen.

16 A. It would be a copy of the questionnaire like
17 this with a lot of notations numerically along the
18 way, column notations and notations as to
19 regarding what all the various columns were for.

20 Q. That doesn't appear in any of the
21 reports that you prepared?

22 MR. SILFEN: I'm not sure I understand
23 the question. You mean in the documents that you
24 put here?

25 MR. EDELL: No. In any of the

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2017010956

D. Neadle - direct

1 reports. I only was furnished with two reports.

2 Q. Are there more reports than these two?

3 MR. EDELL: I produced all the reports
4 you gave me, Mr. Silfen.

5 MR. SILFEN: He hasn't said that the
6 master coding document is in the reports. He just
7 said that it exists and I know it was in the
8 documents that we gave you so if you don't have
9 it, it's because you didn't bring it.

10 A. It was a separate document not in a report.

11 Q. What does it look like, sir?

12 A. It looks like a questionnaire.

13 Q. It has handwritten notes on it?

14 A. Right, with column designations and
15 instruction designations as to what questions are
16 asked of which respondents and it should include
17 designations as to what information is being put
18 down here in these columns.

19 Q. When you say what questions are asked
20 of what respondents, I thought that all the
21 questions appear on the questionnaire. Is that
22 not right?

23 A. All of the questions appear on the
24 questionnaire, yes, that's correct.

25 Q. Not all of them are asked of each

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2017010957

D. Needle - direct

1 interviewee?

2 A. The questions on the respondent selection
3 form are not asked of each respondent. A
4 respondent is asked one question out of ten
5 questions that appear here.

6 Q. Out of the ten questions that appear
7 on the first page under B. Is that what you are
8 saying?

9 A. That's correct.

10 Q. It's your testimony that there's a
11 master code that tells you what questions should
12 be asked of what respondents?

13 A. The instructions tell you which one but that
14 master code sheet will have code designations for
15 the computer to indicate how the computer is going
16 to recognize it since the computer doesn't read
17 the words.

18 Q. Without that code sheet, you can't
19 identify what the numbers mean on the right-hand
20 side of the bottom of the third page. Is that
21 right?

22 A. That's right. I don't recall specifically
23 what they were without that master code sheet.

24 Q. Let's take a look at the report, the
25 final report, which has been marked as Needle

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2017010958

D. Needie - direct

1 Exhibit 10. Did you have a column current
2 cigarette smokers, first page of the tabular
3 results?

4 A. Yes.

5 Q. Under causes cancer, it has 9.6. Does
6 that mean 9.6 of the current smokers? Is that
7 wrong?

8 A. I'm sorry. I don't follow you.

9 Q. I thought there's a column on the
10 left-hand side where it says causes lung cancer.

11 A. Yes.

12 Q. Do you see that?

13 A. Yes.

14 Q. If you carry it across to current
15 cigarette smokers, is there a percentage there?

16 A. Yes.

17 MR. SILFEN: You said causes cancer.

18 Q. I'm sorry. Causes lung cancer.

19 A. That means 9.6 percent of all current
20 cigarette smokers gave a response that was
21 categorized as causes lung cancer to question one
22 you have a percentage of 88.8 under current
23 cigarette smokers for the column on the side of
24 negative health effects. Is that right?

25 A. Negative health effects net, that's correct.

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2017010959

D. Neadle - direct

1 Q. What does that mean, negative health
2 effects net?

3 A. That means that that's all the people who
4 made one or more mentions of a comment indicating
5 a negative health effect in response to question
6 one and the 58.5 percent is the percentage of
7 current cigarette smokers who in effect said that,
8 meaning 58.5 percent of current cigarette smokers
9 made one or more statements in response to
10 question one that indicated that their response
11 was categorized as a negative health effect. They
12 could have made more than one but at least one.

13 Q. Would you tell me what statements were
14 included in the negative health effects net
15 column?

16 A. The first nine categories starting with
17 causes lung cancer so it would be causes lung
18 cancer, causes other types of cancer, causes
19 cancer general, shortens life, kills, causes other
20 diseases, affects health. I have to count down.
21 Well, excuse me. Am I supposed to be writing on
22 this exhibit now? I was making notes to count
23 down.

24 Q. If you are numbering all of those --

25 A. All I was doing was numbering.

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D. Neadle - direct

1 Q. That's okay. As long as we know what
2 you are doing. You are numbering on the left-hand
3 column the first nine negative mentions, is it?

4 A. The first nine categories starting with
5 causes lung cancer.

6 Q. So that would include causes of lung
7 cancer, causes of other types.

8 A. Not of. Causes lung cancer, causes other
9 types of cancer, causes cancer general, shortens
10 life, kills, causes other diseases, affects
11 health, addictive, habit-forming, like a drug, the
12 next one is know people who died or got diseases
13 because of smoking, the next one is polluting
14 other health-related effects, and the last one is
15 bad, dangerous to health general. Those are the
16 nine categories that are included in the negative
17 health effects net.

18 Q. Did you add those nine up, you would
19 get 58.57

20 A. No. You would probably get a minimum of
21 58.5 but probably more.

22 Q. Because some people have more than one
23 negative thing to say about the health aspect of
24 cigarettes. Is that right?

25 A. That's correct.

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2017010961

D. Needle - direct

1 Q. In terms of negative mentions of, when
2 you say negative mentions on this thing, what does
3 that mean?

4 A. That would include the negative health
5 effects plus expensive, costly, smokers are
6 crazy/idiots, never want to smoke, public has been
7 made aware of dangers to health, more should be
8 done to discourage smoking. It goes through all
9 of the responses down to all other negative
10 mentions on the second page.

11 Q. In the left-hand column on the first
12 page of these tabular results, it has expensive,
13 costly, 12.5 percent of current smokers mention
14 that as a negative mention.

15 A. Yes.

16 Q. As opposed to 9.6 mentioned causes
17 lung cancer as a negative mention. Is that
18 correct?

19 A. That's correct.

20 Q. So more people made negative
21 statements in terms of expense and costliness than
22 they did with regard to causes lung cancer. Is
23 that right?

24 MR. SILFEN: Objection to the form of
25 the question. You may answer.

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2017010962

D. Needie - direct

1 A. More current smokers said expensive, costly
2 then specifically said causes lung cancer but
3 there are other types of cancer included.

4 Q. Of the causes other types of cancer,
5 .5 for current smokers?

6 A. Right, and causes cancer in general, 16.3.

7 Q. Can one interpret this data as those
8 statements for which one receives a higher
9 percentage or things that smokers are more
10 concerned about than those for which you receive a
11 lower percentage?

12 MR. SILFEN: Objection to the form of
13 the question.

14 A. Would you repeat that?

15 Q. Let me see if I can make it more
16 intelligible. For example, causes lung cancer,
17 you have 9.5 percent of the people making that
18 statement when you read the first question to
19 them.

20 A. Yes.

21 Q. What I'm trying to find out is whether
22 or not smokers are more concerned with the expense
23 of cigarettes as opposed to causes lung cancer
24 because you get a higher percentage listing
25 expensive, costly as a negative mention as opposed

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2017010963

D. Needle - direct

1 to causes lung cancer.

2 A. I would say my interpretation of it would be
3 exactly the opposite.

4 Q. Why is that?

5 A. Because the fact that it causes lung cancer
6 is a very specific, expensive, costly is the only
7 category we have dealing with the whole cost
8 situation so that means a total of 12.5 percent of
9 current smokers mentioned anything to do with cost
10 or expense. We have causes cancer net for current
11 cigarette smokers of 25 percent, which is
12 approximately double the percent who said anything
13 about expense and that's just specific mentions of
14 cancer. There are also people who, another 19
15 percent said causes other diseases, meaning or
16 three percent said it shortens life, meaning they,
17 I don't know if they were talking about cancer or
18 not. They didn't specifically say the word cancer
19 but at least 25.1 percent of them specifically
20 mentioned the word cancer.

21 Q. How do you get the net, the subnet
22 significant figure for causes cancer in current
23 smokers?

24 A. That's the number of people who said one or
25 more of the following: Causes lung cancer, causes

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2017010964

D. Needle - direct

1 other types of cancer, causes in general.

2 Q. Do you add those columns up?

3 A. No. You don't add them. It's the number of
4 people who said one or more of those things. They
5 are only counted once even if they said it three
6 times.

7 Q. Turn to the second page. Before I ask
8 you that, why did you have a subset of causes
9 cancer and you didn't have a subset of causes

.....?

-- ... I'm not sure I know what you mean. Causes
12 other diseases was all one category. In the
13 interest of getting as much detail as possible, we
14 broke cancer mentions up into different types of
15 cancer mentions but felt it would be of interest
16 to know how many people use the term cancer
17 specifically, regardless of whether they might
18 have used it twice, so since you can't add that up
19 to find out, when we broke it up into three
20 categories, we also designed it to produce a net
21 of how many people mentioned it at least once.

22 Q. When you say mentions it --

23 A. Mentions cancer in response to the question.
24 "When I mention cigarettes, what comes to your
25 mind?"

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2017010965

D. Neadle - direct

1 Q. That reflects awareness, not belief.

2 Right, sir?

3 MR. SILFEN: Objection to the form of
4 the question.

5 A. No. It doesn't reflect awareness or belief
6 specifically. It reflects what the term
7 "cigarettes" generates in people's minds.

8 Q. The 25 percent for current smokers,
9 for causes cancer, that doesn't mean that 25
10 percent of the current smokers that were surveyed
11 thought that cigarette smoking causes cancer. Is
12 that right?

13 A. It means that that's a thought that the term
14 "cigarettes" generates in their mind.

15 Q. If somebody responded by saying I
16 heard that cigarette smoking causes cancer, would
17 they be included in causes cancer?

18 A. Yes, they would.

19 Q. So it could be either somebody was
20 aware of a statement that cigarette smoking caused
21 cancer or someone believed that cigarette smoking
22 caused cancer. Is that correct?

23 MR. SILFEN: Objection to the form of
24 the question.

25 A. It could mean both of those things. It

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D. Neadle - direct

1 could mean other things as well. It could mean
2 that the term cigarettes generates the thought of
3 cancer in their minds.

4 Q. What else could it mean other than the
5 respondent either believes that cigarette smoking
6 causes cancer or heard that cigarette smoking
7 causes cancer?

8 A. There could be people who really haven't
9 made up their minds on it but they associate the
10 term.

11 Q. Where is that broken out as to people
12 who are undecided on the issue of cigarette
13 smoking and cancer?

14 A. It's not within the framework of this
15 question.

16 Q. You didn't think it was important to
17 break out the people who were decided on the issue
18 who thought cigarette smoking caused cancer or
19 not?

20 MR. SILFEN: Objection to the form of
21 the question.

22 A. The purpose of this question was to find out
23 as I said or determine what does the term
24 cigarettes generate in people's minds, what
25 thoughts, what concepts. That's broken out here.

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2017010967

D. Neadle - direct

1 Q. Let me make sure I understand. On the
2 tabular results under causes cancer subnet, you
3 have 25.1 percent. Correct?

4 A. For current cigarette smokers.

5 Q. For current cigarette smokers. And
6 that would people who responded to the question
7 when I mention cigarettes, what comes to your
8 mind, responses such as I believe cigarettes cause
9 cancer, I heard cigarettes cause cancer or I
10 haven't decided whether cigarette smoking causes
11 cancer. Is that right?

12 A. The 25.1 percent would include among current
13 cigarette smokers people who made each of those
14 types of statements.

15 Q. What percentage of the 25.1 percent of
16 current smokers who are characterized as having
17 responded "causes cancer" stated that they
18 believed that cigarette smoking caused cancer?

19 A. I don't know.

20 Q. How many of those people said they
21 were undecided as to whether or not cigarette
22 smoking caused cancer?

23 A. I don't know.

24 Q. How many people simply said I'm aware
25 that people say that cigarette smoking causes

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2617310968

D. Needle - direct

1 cancer?

2 A. I don't know.

3 Q. Would your answer be the same with
4 regard to causes lung cancer, that there would be
5 people included in that category as being
6 undecided as to whether or not cigarette smoking
7 causes lung cancer? Again we are looking at the
8 current cigarette smokers, 9.6 percent.

9 A. I don't know if there would be people in
10 there who said that, but if somebody did say it,
11 they would be there.

12 Q. If somebody said, "I believe cigarette
13 smoking causes lung cancer," they would be in that
14 category also?

15 A. That's correct.

16 Q. If somebody said, "I heard that
17 cigarette smoking causes lung cancer," they would
18 be in that category also?

19 A. That's correct.

20 Q. You didn't think it was necessary to
21 break those three responses out. Is that correct?

22 MR. SILFEN: Objection to the form of
23 the question.

24 A. I did not think it was necessary for the
25 purposes of the study, no.

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2017010969

D. Needie - direct

1 Q. Did you discuss the question of
2 breaking those three different responses out,
3 undecided, I believe it causes or I heard that it
4 causes, with Arnold & Porter or Shook, Hardy &
5 Bacon or Jones, Day?

6 A. No, I did not.

7 Q. Why?

8 MR. SILFEN: Objection to the form of
9 the question.

10 A. I and my staff set up all of these
11 categories.

12 Q. Do you know what percentage of the
13 25.1 percent of current smokers who fall into the
14 category "Causes cancer" were undecided as to
15 whether or not cigarette smoking caused cancer?

16 MR. SILFEN: Hold it. You've asked
17 him that question. If you haven't, inform me but
18 it's my clear impression that you asked him that
19 question already. Why are you asking it again?

20 MR. EDELL: Maybe it just slipped my
21 mind, Mr. Silfen.

22 MR. SILFEN: Don't ask him again.
23 Don't answer that question.

24 MR. EDELL: Are you directing him not
25 to answer the question?

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20170310970

D. Needle - direct

1 MR. SILFEN: If you are going to
2 represent to me that you haven't asked it before,
3 I'll let you ask it, but your answer seemed to be
4 that it slipped your mind.

5 MR. EDELL: I didn't think that I did
6 but unlike you, I make mistakes at times. I'm
7 just trying to get a response to the question on
8 the outside chance that even if you are right, we
9 do have a complete transcript here.

10 MR. SILFEN: On the outside chance,
11 Mr. Needle, did you break down the 25.1 between
12 undecideds and other categories?

13 MR. EDELL: That wasn't my question.

14 MR. SILFEN: Ask your question.

15 MR. EDELL: Could you repeat it,
16 please.

17 (Question read.)

18 A. No, I do not no.

19 Q. Turn to page four. My copy is not
20 that good of this, of these tabular results.
21 Let's take, for example, the column current
22 smokers, responsibilities providing an estimate of
23 one to ten years in the left-hand side of the
24 page. Do you see that?

25 A. It's not one to ten years.

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2017010971

D. Needle - direct

1 Q. What is that?

2 A. It's one to ten out of 100 cigarette
3 smokers.

4 Q. I'm sorry. The left-hand column says
5 one to ten cigarette smokers will develop lung
6 cancer from their smoking. Is that correct?

7 MR. SILFEN: What?

8 Q. Is that what that means, one to ten?

- 9 A. It means that respondents in that row are
10 people who said something between one and ten in
11 response to the question of among 100 cigarette
12 smokers.

13 Q. Out of 100 cigarette smokers, the
14 people in that row said one to ten people will get
15 lung cancer. Is that correct?

16 A. That's correct.

17 Q. If we look under current smokers, we
18 have a figure of 23.2 percent of current smokers
19 said between one and ten smokers out of a hundred
20 smokers will get lung cancer. Is that right?

21 A. Because they smoke.

22 Q. Because they smoke?

23 A. Right.

24 Q. Of that 23.2 percent, how many people
25 said they knew that fact and how many people said

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2017010972

D. Neadle - direct

1 they guessed at that?

2 A. We didn't ask that question.

3 Q. How many people responded to that
4 question to the second part of that question, "If
5 don't know, just your best guess will do"?

6 A. We have no record of that.

7 Q. So you don't know how many of those
8 23.2 percent of current smokers are just giving
9 the interviewer their response, "I don't know but
10 I'm giving you my best guess." Is that correct?

11 A. That's correct.

12 Q. In your opinion if a respondent
13 indicates that they don't know but they give you a
14 guess, that reflects the respondent's beliefs with
15 respect to cigarette smoking and disease?

16 MR. SILFEN: Objection to the form of
17 the question. You say answer.

18 A. Not disease in general. Lung cancer
19 specifically.

20 Q. So if the respondent for the purposes
21 of this survey said that they didn't know how many
22 smokers out of 100 cigarette smokers would develop
23 lung cancer but made a guess at it, you think that
24 that reflects their belief with respect to
25 cigarette smoking and lung cancer. Is that right?

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2017010973

D. Needle - direct

1 MR. SILFEN: Objection to the form of
2 the question.

3 A. In response to a question of how many do you
4 think, some respondents interpret the question as
5 wanting a very specific kind of answer to an exact
6 digit and they say I don't know. The probe of
7 just your best guess will do in fact inform them
8 that a rounded number is in fact acceptable and I
9 believe it reflects their belief.

10 Q. How do you know that the respondent
11 has no idea and is just giving an off-handed
12 number?

13 MR. SILFEN: Objection to the form of
14 the question.

15 A. Those respondents, I believe that those
16 respondents who have no idea said that and are not
17 included in this tabulation.

18 Q. So if I was being interviewed and I
19 said I don't know, I have no idea how many, the
20 instructions were that the interviewer was to say
21 well, just give me your best guess?

22 A. The interviewer's instructions were to ask
23 for your best guess. If you responded to that I
24 don't know or I can't make a guess or words to
25 that effect, that was the final response.

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D. Neadle - direct

1 Q. I understand that but if I answered
2 the first question, "Among 100 cigarette smokers
3 how many of them do you think will get lung cancer
4 because they smoke," by saying I have no idea, the
5 instructions to the interviewer were that they
6 should say well, just give me your best guess. Is
7 that right?

8 MR. SILFEN: We have been all over
9 that. You've asked him that three times. What do
10 you want?

11 Q. Is that right?

12 A. Just your best guess will do.

13 Q. And, therefore, if that same person
14 said in response to, "Just your best guess will
15 do," 20, then that would be recorded. Correct?

16 A. That's correct.

17 MR. EDZELL: Would you please mark
18 these, please.

19 (Neadle Exhibit 13 and 14 marked for
20 identification.)

21 Q. Mr. Neadle, I show you two documents,
22 the first of which has been marked Neadle Exhibit
23 13, which is, it appears to me and you'll correct
24 me, I'm sure, if I'm wrong, to be -- well, I won't
25 even characterize it. I show you two different

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2017010975

D. Neadle - direct

1 tabular results of your survey. Can you explain
2 to me what each one contains.

3 A. Neadle Exhibit 13 are the tabulations of the
4 results to the survey on an unweighted raw
5 respondent count basis.

6 Q. What is number 14?

7 A. Number 14 is a copy of the weighted
8 projected tabulations prior to final edits.
9 Included on it are some pencil notations in my
10 handwriting of results to the first wave of the
11 pilot study and also some unweighted numbers.

12 Q. The tabular results in the report that
13 you furnished to Arnold & Porter, those are
14 weighted? Is that correct?

15 A. Weighted and projected results.

16 Q. What do you mean by projected?

17 A. They are projected to the total
18 non-institutionalized population of the United
19 States aged 16 and older living in households in
20 the coterminous United States.

21 MR. ZDELL: Would you mark that,
22 please.

23 (Neadle Exhibit 15 and 16 marked for
24 identification.)

25 Q. Can you tell me what Neadle Exhibit 15

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2017010976

D. Needle - direct

1 is, sir?

2 A. It's a copy of the final survey
3 questionnaire which was used as a coding master.

4 Q. Is that what we were referring to
5 previously?

6 A. Yes.

7 Q. Now that you have that, can you
8 explain to me what the numbers are that appear on
9 some of the other questionnaires on page three? I
10 believe it was right underneath the box where it
11 says 31-1 and 31-2.

12 A. Yes.

13 Q. What are they?

14 A. The first digit, there were, I believe, four
15 digits.

16 Q. You are referring to which exhibit
17 now?

18 A. In Exhibit 11, there were four digits below
19 the box you signified showing 31-102. The first
20 of those digits refers to a code for the
21 respondent's sex, male or female. The next three
22 refer to the location or what we call PSU, primary
23 sampling unit.

24 Q. Tell me what Needle Exhibit 16 is.

25 A. (Examining document.) A copy of a code

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2017010977

D. Needle - direct

1 sheet used by our coding department. I can't tell
2 from this whether it's the final version or
3 intermediate version.

4 Q. Who's Lee Frankel?

5 A. He is executive vice-president of Audits &
6 Surveys.

7 Q. What work did he do on the study?

8 A. He supervised the overall sampling design
9 used and was responsible for the computations of
10 the sampling errors shown in the technical
11 appendix to the report.

12 Q. Why did he work on it?

13 A. Because he is a world-reknowned sampling
14 statistician and it's in his area of
15 specialization.

16 Q. Did you rely upon his work?

17 A. I certainly do.

18 Q. In this case, in this survey did you
19 rely upon his work?

20 A. Yes.

21 MR. EDELL: Let's take a short break.
22 I'll ask the court reporter to mark some documents
23 that I have no idea what they are.

24 (Needle Exhibits 18 to 30 marked for
25 identification.)

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D. Neadle - direct

1 Q. Mr. Neadle, before I forget, you told
2 us that Neadle 10 for identification was prepared
3 you think sometime in early 1986, is it, sir?

4 A. Yes.

5 Q. When did you furnish it to counsel?

6 A. I would assume shortly after it was
7 prepared.

8 MR. EDELL: Mr. Silfen, if that is the
9 expert's report, can I understand or get an
10 understanding from you as to why we weren't
11 previously furnished with that as his report as
12 opposed to this one-page summary in this case? We
13 are entitled to all the reports furnished to you
14 by your experts.

15 MR. SILFEN: Was this expert
16 designated?

17 MR. EDELL: Months ago as I understand
18 it.

19 MR. SILFEN: This expert?

20 MR. EDELL: Yes.

21 MR. SILFEN: This expert was
22 designated as one of the people that was in
23 response to your last wave so it wasn't months
24 ago. Whenever it was.

25 MR. EDELL: It was at the very

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2017010979

D. Needle - direct

1 beginning of September.

2 MR. SILFEN: Three months ago?

3 MR. EDELL: We are at the end of this
4 month.

5 MR. SILFEN: Let's find out when it
6 was. This this gentleman was designated sometime
7 in September. You got his underlying work product
8 in time to be ready for his deposition. If you
9 have some other complaints, you know where to go
10 with it.

11 MR. EDELL: Two weeks before the
12 deposition, Mr. Silfen, under subpoena to obtain
13 those things that he relied upon.

14 MR. SILFEN: If you have a complaint,
15 I don't know what you are gaining by airing it
16 here on the record. I don't agree with your
17 analysis. We have a difference of opinion. You
18 can do what you will.

19 MR. EDELL: I just want to find out
20 whether there was any basis for your opinion.

21 Q. I show you what has been marked Needle
22 Exhibit 17 for identification. Can you tell me
23 what that is?

24 A. Needle 17 appears to be the results to the
25 first wave of the pilot study for question one and

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2017010960

D. Neadle - direct

1 question two.

2 Q. Can you tell me what Neadle Exhibit 18
3 is, please?

4 A. It is the results to question one from the
5 first wave of the pilot study with pencil
6 notations of preliminary results to question 1
7 from the main study.

8 Q. What's the number of respondents
9 listed on Neadle Exhibit 19 in the penciled-in
10 notes?

11 A. Neadle Exhibit 18?

12 Q. Yes.

13 A. 3,500.

14 Q. Neadle Exhibit 19, what's that?

15 A. It is the results to question one from the
16 first wave of the pilot study with preliminary
17 results from the main study penciled in.

18 Q. Did those penciled-in notes on Neadle
19 19 precede the notes that you made on 18?

20 A. I would assume so, since it doesn't have the
21 full base of respondents.

22 Q. Tell us what Neadle Exhibit 20 is,
23 please.

24 A. 20 appears to be the results to question
25 three from the first wave of the pilot study.

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D. Neadle - direct

1 Q. Tell us what Neadle Exhibit 21 is,
2 please.

3 A. This is Neadle Exhibit 21, correct?

4 Q. Yes.

5 A. Neadle Exhibit 21 appears to be a marginal
6 tabulation of the results to the full-scale study
7 prior to final editing.

8 Q. What are do the columns signify where
9 it says 1, 2, 3, 4, 5, 6, 7, 8, 9, 0, X and Y?

10 A. That's the identification of the possible
11 punches in an IBM 80-column card. Each column has
12 a potential for 12 punches that are designated one
13 through 0, X and Y.

14 Q. Do these particular columns have any
15 significance, though, in terms of what they
16 represent other than identifying some, I don't
17 know how would you would describe it, IBM punch
18 cards or whatever it is?

19 A. An IBM punch card, standard IBM punch card
20 is 80 columns wide and 12 punches deep. The
21 punches are signified as 1 through 0, X and Y. It
22 just identifies the number that you are indicating
23 as the result or the identification in a
24 particular column.

25 Q. I'm not going to understand it.

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2017010982

D. Neadle - direct

1 anyway. Neadle Exhibit 27.

2 A. Sorry.

3 Q. It's not your fault. That's my fault.

4 A. Neadle Exhibit 27, that is one page of a
5 cleaning editing document from our computer
6 indicating questionnaires that have something
7 that's inconsistent with the instructions. It
8 then has pencil notes by Doris Carella, our coding
9 supervisor, on what should be done to clarify the
10 computer stated irregularity.

11 Q. What does \$REJ signify?

12 A. Column eight reject.

13 Q. What information is in column eight?
14 Do you have to go back to the master code? I'm
15 getting a hang of it, at least to a certain
16 extent.

17 A. Column eight is a question to be asked in
18 households where there are exactly two persons age
19 16 and older and the question reads: "Is the
20 older member of the household male or female?"

21 Q. What's Neadle Exhibit 28, sir?

22 A. Neadle Exhibit 28 is a copy of notes made by
23 Wendy Kreisberg, the project director, in a
24 conversation with the interviewing supervisor
25 regarding her briefing of the interviewing staff

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2017010983

D. Needle - direct

1 to work on this study.

2 Q. Can you read her note?

3 A. "Briefing last evening. Briefing went
4 well. Listened to interviews on phones." I can't
5 read the next line. The Xerox isn't quite good
6 enough. Decision made, something supervisor
7 controlled sample. That is, supervisor will add
8 new numbers and I can't read the next line on this
9 Xerox.

10 Q. How long are the interviews, telephone
11 interviews?

12 A. For this particular study?

13 Q. Yes.

14 A. I would imagine that the study didn't
15 require, once a respondent was selected and on the
16 phone, more than five minutes.

17 Q. What's Needle Exhibit 29?

18 A. It is a preliminary set of tabulations to
19 the full-scale study.

20 Q. When you say preliminary, what do you
21 mean, sir? Is that non-weighted and
22 non-projected?

23 A. Non-weighted, non-projected and prior to the
24 final cleaning and edits.

25 Q. What's cleaning and edits?

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D. Needle - direct

1 A. It's a quality control step to insure that
2 all the interviewers follow their instructions on
3 each questionnaire and that there are no
4 interviewing errors.

5 Q. I show you what has been marked Needle
6 Exhibit 30.

7 A. (Examining document.) It's a lot of
8 introductory pages from a computer program. The
9 key information is on the final page. It's from
10 running, it's a tabulation of a data tape from the
11 current population survey of 1984 providing
12 estimates of the total U.S. household population
13 in the coterminous United States by age, by sex, by
14 census regions.

15 MR. EDELL: Would you mark this,
16 please.

17 (Needle Exhibit 31 marked for
18 identification.)

19 Q. I show you what has been marked Needle
20 Exhibit 31, which is your "report" furnished by
21 counsel for the defendants. Have you ever seen
22 that before, sir?

23 A. I saw it a couple of days ago.

24 Q. Tell me in regard to paragraph one
25 what "to which surveys and polls can be properly

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2017010985

D. Neadle - direct

1 put" means.

2 A. Surveys and polls?

3 Q. Surveys and polls.

4 A. To determine what?

5 Q. I don't know, sir. It's your report.

6 A. I'm sorry. I'm asking you a question.

7 Q. What I'm trying to do is get a little
8 bit more elaboration on what your opinions are in
9 this matter. This is supposed to be a summary of
10 your opinions and the basis for your opinions. I
11 don't think we have to go into any great detail
12 with regard to the survey because now I have your
13 report that you furnished to Arnold & Porter and
14 the other lawyers as well as the underlying data,
15 so I still need to ask you some questions in order
16 that I have a full appreciation of what you are
17 really going to testify to or what opinions you
18 hold so I want to know what "uses to which surveys
19 and polls can be properly put" means.

20 MR. SILFEN: It doesn't sound like a
21 question. If you heard what you are saying, Marc,
22 you'd realize that it doesn't sound like a
23 question. Believe me.

24 MR. EDELL: Okay. Then I'll try it
25 again.

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2017010986

D. Needle - direct

1 MR. SILFEN: Ask him what that
2 sentence means, whether he is going to offer an
3 opinion other than the survey that he has put on
4 the table here and we'll get out of here.

5 MR. EDELL: Sure.

6 Q. What did you mean by the phrase, "uses
7 to which surveys and polls can be properly put"?

8 A. I was referring to the particular survey
9 that's been marked here in all its parts.

10 Q. This survey and this poll. Is that
11 what you are talking about, sir?

12 A. Right, and in effect what it says.

13 Q. You are not going to testify as to
14 what any other survey or any other poll can be
15 used for. Is that right?

16 A. I can't tell what I'm going to be asked. I
17 haven't looked at any other surveys or polls on
18 this subject to analyze.

19 MR. EDELL: Can I have an indication
20 from you, Mr. Silfen, so we don't waste time.

21 MR. SILFEN: You got the same
22 indication from me that you've given to us. Mr.
23 Needle hasn't been asked to look at any other poll
24 at this time. As his report stands now, it
25 applies only to this poll, he has answered you

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D. Neadle - direct

1 properly, that he doesn't know what he is going to
2 be asked to do at trial but right now if you ask
3 him about any other poll he won't be able to
4 answer you because he hasn't done anything else.

5 Q. Certainly the statement in your report
6 doesn't seem to limit itself to the survey and
7 poll that you performed in this matter and I just
8 want to be sure that that's the only survey and
9 only poll upon which you are going to express any
10 opinions or you have any opinions presently
11 concerning its proper use. Is that correct?

12 A. This survey is the only one that presently I
13 can talk about within this case because it's the
14 only one I've looked at or seen or had anything to
15 do with.

16 Q. Tell me all the uses for which one can
17 use your survey, of course properly.

18 A. One can use it to determine the awareness of
19 the general public with regard to the issue of
20 smoking and health, to what degree the public is
21 aware of communications about linking smoking to
22 bad health, and the degree to which the general
23 public feels smoking causes lung cancer. It can
24 also be used in terms of the first question to
25 indicate what the term cigarettes brings to

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2017010968

D. Needle - direct

1 people's minds, both in terms of negative and
2 positive mentions or neutral mentions.

3 Q. Do you see the sentence, the last
4 sentence in paragraph one on Needle Exhibit 31,
5 "Mr. Needle will also be prepared to testify about
6 levels of awareness which are generally
7 demonstrable on matters presumed to be widespread
8 public information and to compare those levels of
9 awareness to levels of awareness with respect to
10 the potential health hazards of smoking"? Would
11 you tell us what those levels of awareness are and
12 with regard to what hazards?

13 A. I don't see anything about hazards in here.
14 The potential health risks of smoking is the
15 current study. As far as anything else goes, as I
16 said, I haven't looked at any other studies and,
17 therefore, I can't testify about them.

18 Q. What subjects are you going to testify
19 to concerning other levels of awareness other than
20 levels of awareness dealing with cigarette smoking
21 and health?

22 A. I can't tell what I'm going to be asked. At
23 the moment I haven't looked at any others and,
24 therefore, I'm not prepared to testify about any
25 others.

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2017010969

D. Neadle - direct

1 Q. As we sit here today, you have no
2 opinion concerning levels of awareness which are
3 generally demonstrable on matters presumed to be
4 widespread public information and you can't
5 compare those levels of awareness to levels of
6 awareness regarding cigarette smoking and
7 disease. Is that right?

8 THE WITNESS: Could you repeat that.

9 (Question read.)

10 A. Not on any specific matters.

11 Q. Can you tell me any general matters,
12 then?

13 A. Just that I believe that the levels of
14 awareness shown in this study are extremely high
15 relative to in general what I've observed in other
16 studies.

17 Q. What other studies?

18 A. Many others for many clients.

19 Q. What other studies?

20 A. Studies of brand awareness and advertising
21 awareness for many clients.

22 Q. I want a specific study, sir, and if
23 you are relying upon them, I was entitled to
24 receive them in advance of this deposition, so let
25 me know what they are specifically so that counsel

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2017010990

D. Needle - direct

1 can identify them and furnish them to me in case
2 we have to take another deposition.

3 A. I guess I don't understand.

4 MR. SILFEN: He wants to know if you
5 are relying on any specific study to make your
6 statement that you thought the levels here were
7 generally high.

8 A. There's no specific study. Just in general
9 many studies that I have read about and/or
10 conducted.

11 Q. What studies?

12 A. I can't name them.

13 Q. What studies have you conducted that
14 you are referring to?

15 A. I have conducted literally hundreds of
16 studies. I'm not sure. I conducted studies for
17 many different clients. These data are the
18 clients' property. I can't produce them.

19 Q. What's the widespread public
20 information that you refer to in that sentence?

21 A. My general recollection of articles I've
22 seen about published polls.

23 Q. What public information are you
24 referring to? You are talking about widespread
25 public information and you can compare that with

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2017010991

D. Neadle - direct

1 regard to other subjects to cigarette smoking and
2 disease and I want to know what widespread public
3 information you are referring to.

4 A. I can't give you any specifics. That's my
5 impression of the published polls that I've seen.

6 Q. Published polls on what subject?

7 A. On many, many different subjects. In the
8 literature I read lots of articles about polls.
9 I've seen lots of poll results. I can't specify a
10 specific one.

11 Q. You can't recall any specific poll
12 that deals with "widespread public information" to
13 which you are going to compare the awareness of
14 cigarette smoking and disease?

15 A. At the moment, no.

16 Q. Did you ever inform anyone that you
17 were going to express an opinion or that you had
18 an opinion regarding levels of awareness which are
19 generally demonstrable on matters presumed to be
20 widespread public information and that you were
21 going to compare those levels of awareness to
22 levels of awareness with respect to the potential
23 health risks of smoking?

24 A. I haven't studied any of the other, any
25 other studies to compare with.

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D. Needle - direct

1 MR. EDLELL: Could you read the
2 question back to the witness.

3 (Question read.)

4 A. Only if I studied some other research.

5 Q. Which you haven't done?

6 A. That's correct.

7 MR. EDLELL: No further questions.

8 (Deposition concluded at 3:30 p.m.)
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JURAT

I, DEXTER NEADLE, do hereby certify
that I have read the foregoing transcript of my
testimony, taken on October 26, 1987, and have
signed it subject to the following changes:

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>
-------------	-------------	-------------------

DATE: _____

Sworn and subscribed to before me on this _____ day
of _____

NOTARY PUBLIC _____

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C E R T I F I C A T E

I, MARGARET J. TEILHABER, a Certified
Shorthand Reporter and Notary Public of the States
of New York and New Jersey, do hereby certify that
prior to the commencement of the examination the
witness was sworn by me to testify the truth, the
whole truth and nothing but the truth.

I do further certify that the foregoing is
a true and accurate transcript of the testimony
as taken stenographically by and before me at the
time, place and on the date hereinbefore set
forth.

I do further certify that I am neither of
counsel nor attorney for any party in this action
and that I am not interested in the event nor
outcome of this litigation.

Margaret J. Teilhaver
Notary Public of the States of New Jersey
and New York
Certificate Number X100886
New Jersey commission expires August 7, 1991
New York registration No. 4741157
New York commission expires February 1990

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